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**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

# Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns

## Use of information and communications technologies to secure the right to life

*Summary*

In the present report, submitted to the Human Rights Council pursuant to its resolution 26/12, the Special Rapporteur on extrajudicial, summary or arbitrary executions discusses the implications of information and communications technologies (ICTs) for the protection of the right to life.

The Special Rapporteur surveys existing applications of ICTs for promoting, protecting and monitoring human rights. While noting the potentially transformative role of "civilian witnesses" in documenting human rights violations and the challenges of using the evidence generated and transmitted by those witnesses — such as verification —, the Special Rapporteur considers how various international human rights mechanisms currently benefit from such material. He makes several recommendations, including that the Office of the United Nations High Commissioner for Human Rights appoint a specialist in digital evidence to assist it in making the best use of ICTs.

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# Contents


| | | *Paragraphs* | *Page* |
|---|---|---|---|
| I. | Activities of the Special Rapporteur | 1–34 | 3 |
| | A. Communications | 3 | 3 |
| | B. Visits | 4–6 | 3 |
| | C. Press releases | 7–22 | 3 |
| | D. International and national meetings | 23–34 | 4 |
| II. | Use of information and communications technologies to secure the right to life | 35–106 | 5 |
| | A Background | 35–43 | 5 |
| | B Promotion and advocacy | 44–48 | 8 |
| | C Prevention and protection | 49–66 | 9 |
| | D Monitoring and fact-finding | 67–76 | 12 |
| | E Evaluating evidence collected using information and communications technologies | 77–91 | 14 |
| | F Use of information and communications technologies by human rights mechanisms | 92–106 | 17 |
| III. | Conclusion | 107–113 | 21 |
| IV. | Recommendations | 114–125 | 22 |
| | A. To the United Nations | 114–116 | 22 |
| | B. To regional human rights mechanisms | 117 | 22 |
| | C. To States | 118–120 | 22 |
| | D. To civil society organizations and academic institutions | 121–122 | 23 |
| | E. To donors | 123 | 23 |
| | F. To technology and software corporations | 124–125 | 23 |

# I. Activities of the Special Rapporteur

1. The Special Rapporteur last submitted a report to the General Assembly in October 2014. In that report (A/69/265), he focused on four topics relating to the protection of the right to life, namely, the role of regional human rights systems; less lethal and unmanned weapons in law enforcement; resumptions in the application of the death penalty; and the role of statistical indicators.

2. The Special Rapporteur submitted his previous report to the Human Rights Council in June 2014. In that report (A/HRC/26/36), he discussed the protection of the right to life during law enforcement and the need to bring domestic laws on the use of lethal force by the police in line with international standards. He also called on the Council to provide the outline of a legal framework on the use of remotely piloted aircraft or armed drones and to remain engaged on the matter of autonomous weapons systems.

## A. Communications

3. The Special Rapporteur made observations on communications sent between 1 March 2014 and 28 February 2015, and on replies received between 1 May 2014 and 30 April 2015 (A/HRC/29/37/Add.5).

## B. Visits

4. From 3 to 7 November 2014, jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, the Special Rapporteur visited the Gambia (A/HRC/29/37/Add.2).

5. Follow-up reports on missions undertaken by the Special Rapporteur to India and Turkey are contained in A/HRC/29/37/Add.3 and 4, and the mission report to Papua New Guinea is contained in A/HRC/29/37/Add.1.

6. Since the submission of his previous report to the Human Rights Council, the Special Rapporteur has sent country visit requests to the Governments of Nigeria, Rwanda, Ukraine and Yemen. He thanks the Governments of the Gambia, Iraq and Yemen for their positive responses to his requests, and encourages the Governments of Egypt, Eritrea, Iran (Islamic Republic of), Nigeria, Pakistan, Rwanda and Ukraine to accept his requests for a visit.

## C. Press releases[1]

7. The press releases set out below were issued by the Special Rapporteur between March 2014 and March 2015.

8. On 6 March 2014, the Special Rapporteur issued a joint statement on allegations of excessive use of force and violence against protesters, journalists and media workers in the Bolivarian Republic of Venezuela.

[1] Press releases of the Special Rapporteur are available from www.ohchr.org/en/NewsEvents/Pages/NewsSearch.aspx?MID=SR_Summ_Executions.

9. On 18 March 2014, he issued a joint statement on the events leading to the death of a Chinese human rights defender.

10. On 30 May 2014, he issued a joint press statement on the decision by the Security Council not to refer the situation in the Syrian Arab Republic to the International Criminal Court.

11. On 12 June 2014, he issued a statement calling on the Government of Mexico to put an end to violations of the right to life in the country.

12. On 2 July 2014, jointly with other mandate holders, he called on the Government of Sri Lanka to stop the promotion of racial and faith-based hatred.

13. On 4 July 2014, he issued a joint statement calling on the Government of Nepal to amend the truth-seeking legislation that allowed for amnesties in cases of serious violations of human rights and humanitarian law.

14. On 8 August 2014, he issued a joint statement expressing grave concern over the escalating trend of arrest and sentencing of individuals in the Islamic Republic of Iran.

15. On 12 August 2014, he issued a joint statement expressing concern at the imminent danger of massacre faced by the Yazidi population and other minority communities exposed to attacks by the Islamic State in Iraq and Al-Sham (ISIS), in Iraq.

16. On 29 September 2014, he issued a joint statement on the possible adoption of Bill No. 85 of 2013, aimed at restructuring and expanding the scope of the jurisdiction of military courts in Colombia.

17. On 29 September 2014, he issued a statement urging the Government of Mexico to investigate the deaths of 22 people.

18. On 10 October 2014, he issued a joint statement calling on the Government of Mexico to investigate the disappearances of 43 students in the State of Guerrero.

19. On 26 November 2014, he issued a joint statement urging the President of the United States of America to support the fullest possible release of a report on Central Intelligence Agency interrogation practices.

20. On 5 December 2014, he issued a joint statement on the decisions of grand juries in the United States not to bring to trial the cases of police officers involved in two high-profile killings.

21. On 27 March 2015, he issued a joint press statement calling for the extradition or prosecution by Spain of those responsible for human rights abuses.

22. During the reporting period, the Special Rapporteur also issued joint statements on the death penalty in Bangladesh, Egypt, India, Indonesia, Iran (Islamic Republic of), Pakistan, Saudi Arabia, the Sudan and the United States.

## D. International and national meetings

23. The activities carried out by the Special Rapporteur during the period from 26 March to 22 July 2014 are outlined in the report submitted to the General Assembly at its sixty-ninth session (A/69/265).

24. On 2 September 2014, the Special Rapporteur delivered an address on the death penalty to the Human Dimension Committee of the Organization for Security and Cooperation in Europe, in Vienna.

25. On 15 September 2014, he gave a lecture on autonomous weapons systems at the Stellenbosch Institute for Advances Studies, in South Africa.

26. On 18 and 19 September 2014, he participated in the World Health Organization and University of Cambridge Global Violence Reduction Conference 2014, at King's College, Cambridge, United Kingdom of Great Britain and Northern Ireland.

27. On 22 September 2014, he participated in a panel discussion entitled "Ensuring the use of remotely piloted aircraft or armed drones in counter-terrorism and military operations in accordance with international law, including international human rights and humanitarian law", organized by the Human Rights Council, in Geneva.

28. On 25 September 2014, he delivered a speech at the parliamentarian seminar on drones, organized by the Parliament of Norway, in Oslo.

29. From 29 September to 3 October 2014, the Special Rapporteur participated in the 21st annual meeting of the special procedures mandate holders, in Geneva.

30. On 8 and 9 October 2014, he participated in the international workshop on enhancing cooperation between United Nations and regional mechanisms for the promotion and protection of human rights, organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR), in Geneva.

31. On 20 October 2014, he participated in a discussion at the University of Columbia, New York, that was co-sponsored by Columbia Law School Human Rights Institute, Rightlink, the Institute for the Study of Human Rights, the Human Rights and Humanitarian Policy Concentration of the School of International and Public Affairs and the Human Rights Law Review.

32. On 10 and 11 November 2014, he participated in the third Jakarta Human Rights Dialogue, on the right to life and a moratorium on the death penalty in the countries of the Association of Southeast Asian Nations (ASEAN), organized by OHCHR, the European Union and the Indonesian representative to the ASEAN Intergovernmental Commission on Human Rights, in Jakarta.

33. On 10 December 2014, he spoke at the launch of *The War Report 2013: Armed Conflicts and their Consequences*, organized by the Geneva Academy of International Humanitarian Law and Human Rights, in Geneva.

34. On 6 February 2015, he spoke at the ninth meeting of the Security Forum, entitled "From drones to killer robots", organized by Webster University in collaboration with the United Nations Institute for Disarmament Research, in Geneva.

# II. Use of information and communications technologies to secure the right to life

## A. Background[2]

35. Given that many of the norms of international law concerning the right to life have broadly been settled, the work relating to protecting this right often concerns disputed facts

[2] The Special Rapporteur thanks the Centre of Governance and Human Rights, University of Cambridge, in particular Ella McPherson and Thomas Probert, for their valuable research support. As part of the research, descriptions of many of the applications and projects discussed have been collated and are available from http://ictandhr.tumblr.com/.

or even the availability of facts. Individuals commit violations of the right to life not because they believe it is justifiable, but because they believe they will not be called on to justify themselves. That places a premium on fact-finding and evidence.

36. Because of the expertise that fact-finding requires, the development of human rights methodologies has hitherto gone hand in hand with the professionalization of human rights.[3] It has evolved over what has been characterized as three generations of communities involved in international human rights monitoring, each with its own methods. First, there was the systematic review of available information by a distinguished group of lawyers on behalf of intergovernmental organizations; second, came the fact-finding revolution, led by large international human rights non-governmental organizations (NGOs), that dramatically broadened the field but remained attached to witness interviewing, which offers first-hand and very detailed accounting, but which can be very time consuming and vulnerable to interference and selection biases. Over time, the methodology of the second generation was incorporated into the practices of the first generation, including the special procedures of the Human Rights Council. Now, however, the field is being transformed again by a diverse and growing array of digitally enabled actors — the third generation —, including witnesses, monitors and activists, characterized by greater flexibility of fact-finding methodology and output.[4] Each generation has broadened the base of those who participate in human rights investigations. No generation has invalidated earlier work, but it is important that each is able to draw on the strengths of the others without compromising its own capacities.

37. It has become clear that information and communications technologies (ICTs) — the hardware and software that facilitate the production, transmission, reception, archiving and storage of information — can play an increasing role in the protection of all human rights, including the right to life. Information harnessed in this way can be used to secure accountability, but the technology can also ensure visibility or mobilize support for persons in immediate danger.

38. In his daily work of identifying and assessing claims about unlawful killings, the Special Rapporteur, like many others in the field, is increasingly dependent on information mediated through technology. See, for example, the use of video material taken with cell phones during the civil war in Sri Lanka to press both the State and the international community for fuller investigation of the widespread violations of many human rights, including the right to life, alleged to have occurred (A/HRC/17/28/Add.1). Similarly, in preparing the report to the Human Rights Council on the safety of journalists, it became clear how salient citizen journalists and civic media had become through their use of technology to highlight and document violations around the world (A/HRC/20/22 and Corr.1).

39. Increasing digital capacity is greatly enhancing the ability of ordinary people to participate in human rights monitoring. Digital ICTs create opportunities for pluralism that can democratize the process of human rights fact-finding, as well as offer mechanisms of social accountability that citizens can use to hold States and others to account.[5] Social media have created a wealth of opportunities for civilians to highlight human rights violations that they have witnessed, often unmediated by formal intergovernmental or non-governmental structures. This has far-reaching implications for the established power

[3] Molly K. Land, "Networked activism", *Harvard Human Rights Journal*, vol. 22 (2009), pp. 205–43.

[4] Philip Alston "Introduction: third generation human rights fact-finding", *Proceedings of the Annual Meeting of the American Society of International Law*, vol. 107 (April 2013), pp. 61–62.

[5] Molly K. Land and others, *#ICT4HR: Information and Communication Technologies for Human Rights* (World Bank Institute, 2012).

relations in human rights monitoring as there is a much wider community of human rights monitors at work than ever before. It also presents opportunities in contexts that might otherwise be closed to scrutiny. In circumstances where the physical presence of human rights investigators can be a challenge, the sensitive use of ICTs can help to avoid information austerity about situations that are of great interest to the human rights community.

40. However, the development of ICTs should not be viewed as an unqualified good in terms of the protection of human rights. Opportunities for States to carry out surveillance on and interfere in the work of civil society have multiplied in the digital space, and the Council should be vigilant concerning the dangers as well as the affordances of ICTs.[6] The use of technology by human rights activists and others can expose them to a range of risks, of which many may not be aware.

41. In order to fully realize the potential of ICTs for human rights work, it is necessary to address the issue of the digital divide in terms of both access and literacy. On the one hand, ICTs facilitate pluralism within human rights work, allowing amateurs to complement professionals; on the other hand, however, they can create new lines of inclusion and exclusion that often correspond with pre-existing barriers to access to resources and power, such as language, education, affluence or gender.[7] Moreover, in addition to providing opportunities to speak, pluralism is also about being heard. Being heard by human rights fact-finders may depend on one's ability to produce verifiable information, which can in turn be determined by one's digital literacy and digital footprint.[8] The greater availability of digital information on human rights violations in one context or region may lead to such violations being prioritized over more egregious but less visible violations elsewhere.

42. It is clear that, if used sensibly, ICTs can enhance the protection of human rights, including the right to life. Various parts of the wider United Nations system have been investing significant time and resources into accommodating the affordances of ICTs into their methods of work. The Office for the Coordination of Humanitarian Affairs and the Department of Peacekeeping Operations have been developing advanced techniques for crisis monitoring and mapping. The International Criminal Court has undertaken a review into the way it handles digital evidence. Nonetheless, it still seems that the full potential of these new tools has not been systematically investigated and internalized by the human rights community (see A/65/321, paras. 3–10).

43. In the present report, the Special Rapporteur considers how ICTs present, in particular, opportunities and challenges for the core modalities of human rights work, that is, promotion, protection and monitoring or fact-finding to ensure accountability should a violation occur. Although the impact of ICTs and social media on advocacy spaces has been explored elsewhere, it will be briefly discussed here, as will the role of technology in facilitating physical protection and the necessary security measures for safety in a digital environment, which are both significant from the perspective of the mandate. The Special Rapporteur will then address the question of using ICTs to collect information concerning

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[6] The Special Rapporteur notes that, at its twenty-eighth session, the Human Rights Council decided to appoint a special rapporteur on the right to privacy in the digital age.

[7] A. Trevor Thrall, Dominik Stecula and Diana Sweet, "May we have your attention please? Human rights NGOs and the problem of global communication", *International Journal of Press/Politics*, vol. 19, No. 2 (April 2014), pp. 135–59.

[8] Ella McPherson, "Advocacy organizations' evaluation of social media information for NGO journalism: the evidence and engagement models", *American Behavioral Scientist*, vol. 59, No. 1 (July 2014), pp. 124–48.

violations, which can foster accountability, exploring the challenges faced, including the challenge of verification. Finally, the Special Rapporteur will consider the extent to which digital evidence is currently used within parts of the international human rights machinery.

## B. Promotion and advocacy

44. Greater capabilities for information sharing and communication present obvious and now widely used opportunities to disseminate information about human rights, either generally, as education, or as more focused advocacy in support of legislative or policy changes, or calling for investigation or accountability concerning individual cases. Human rights organizations can supplement traditional communication strategies using mainstream media, by targeting the public directly.

45. Websites, for example, are used by intergovernmental and non-governmental organizations, as well as States, to make information about human rights norms or legal standards available to the widest possible audience. In previous reports, the Special Rapporteur underlined the importance of clear and publicly available legal frameworks for preventing arbitrary killings through the use of force or the application of the death penalty (A/HRC/26/36 and A/67/275).[9] ICTs clearly enable States to be more transparent towards their populations and the international community.

46. In addition to providing information digitally, many human rights organizations have developed expertise in using social media quickly and directly to engage members of the public. ICTs may create new educational opportunities that foster environments supportive of human rights. In Kenya, the PeaceTXT initiative sent peace-promoting text messages to registered subscribers with the aim of de-escalating potential conflicts. Elsewhere, NGOs have used secret filming to expose extreme cases of bigotry and harassment in order to sensitize public.[10]

47. Digital ICTs can thus facilitate the widespread visibility of human rights, at least among those connected through social media. Applications such as AiCandle or Pocket Protest allow users to sign petitions, write e-mails or receive human rights information using their mobile or smartphones and are particularly useful for urgent mobilizations.[11] Messages can also be amplified using platforms such as Thunderclap. Ultimately, such strategies can succeed in getting a case or issue on the public agenda.[12]

48. Questions remain as to whether these affordances are markedly changing advocacy dynamics for the better. Campaigns compete for attention in an ever-proliferating information context and are accessible — at least in the first instance — only to the digitally literate.[13] Meanwhile, the brevity of the messages and real-time culture of Twitter may preclude or simplify coverage of complicated situations and the drivers of virality can

[9] See also www.use-of-force.info.

[10] Cynthia Romero, "What next? The quest to protect journalists and human rights defenders in a digital world", conference report, Freedom House, Mexico City, (February 2014), https://freedomhouse.org/sites/default/files/What%27s%20Next%20-%20The%20Quest%20to%20Protect%20Journalists%20and%20Human%20Rights%20Defenders%20in%20a%20Digital%20World.pdf.

[11] See Amnesty International UK, "What is pocket protest?" (June 2013), www.amnesty.org.uk/what-pocket-protest.

[12] See Jiva Manske "Case studies: concrete examples of compelling and strategic use of social media", *New Tactics in Human Rights* (9 May 2013), https://www.newtactics.org/comment/6124.

[13] Thrall, Stecula and Sweet, "May we have your attention please?" (see footnote 7).

sit uneasily with human rights evidence.[14] Social networks are effective at increasing participation, in part because they lessen the motivation that participation requires, which can lead to shallow or fickle forms of activism (so-called "clicktivism").[15] However, some have argued that such seemingly insignificant moves are significant in their accumulation, demonstrating a "supportive environment" and "drawing awareness".[16]

## C. Prevention and protection

49. ICTs can contribute to the prevention of violations of the right to life, by State or non-State actors, in a variety of ways. First of all, alert applications can provide physical and digital protection to potentially vulnerable groups, including human rights defenders. While that enables networks to take advantage of digital connectivity, the very same connectivity is a risk for those vulnerable to digital snooping or other forms of surveillance. Secondly, there is need for education on digital security and safety. Surveillance can, however, also be a preventive mechanism, and tactics ranging from live-streaming demonstrations or police operations to using satellite imagery will be discussed below.

### 1. Alert applications

50. Various organizations are developing alert applications that activists, journalists and others can use to send a signal that they are in danger. For example, Amnesty International developed a "panic button" application — disguised as an ordinary utility — that allows users secretly to activate an alarm by sending a text message, and, optionally, geolocation data, that can be sent to pre-selected contacts by rapidly pressing the power button of the phone. When activists or journalists are attacked or detained, their phones are often taken for the lists of contacts they store. The hidden application will continue to broadcast alerts, which are not only calls for help but also warnings to the person's contacts that they should take security precautions themselves.[17] Other applications or devices have been developed with the same objective.[18]

51. Such applications respond to the challenges posed by a lack of information and time lags, which can restrict efforts to protect individuals at risk. Practitioners believe that there is an approximately 48-hour window after an individual is detained or threatened during which a large-scale response is most likely to have the greatest effect. There are numerous examples worldwide in which mass response to detention — coordinated using social media or otherwise — has persuaded authorities to recalculate the merits of keeping an individual in custody.

52. The new technologies thus fit into wider and long-standing strategies of communicating with a trusted network when at risk and mobilizing a wide community to respond vocally or visibly to an arbitrary act against an individual. It is important, however, to bear in mind the potential risks of such technology which could become the basis of identification and targeting.

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[14] Dustin N. Sharp, "Human rights fact-finding and the reproduction of hierarchies" (6 June 2014), *Social Science Research Network*, http://papers.ssrn.com/abstract=2341186.

[15] Malcolm Gladwell, "Small change: why the revolution will not be tweeted", *The New Yorker* (4 October 2010), www.newyorker.com/reporting/2010/10/04/101004fa_fact_gladwell.

[16] Stephanie Vie, "In defense of 'slacktivism': the Human Rights Campaign Facebook logo as digital activism", *First Monday*, vol. 19, No. 4 (April 2014), http://firstmonday.org/ojs/index.php/fm/article/view/4961.

[17] See https://panicbutton.io/.

[18] BBC News, "Smart bracelet protects aid workers" (5 April 2013), www.bbc.com/news/technology-22038012.

### 2. Importance of digital security

53. While they provide additional capabilities for those working on human rights issues, ICTs can present a number of additional risks, and to mitigate those risks, persons potentially at risk of violations, including human rights defenders, should take the requirements of digital security seriously. Digital security can include software to scan computers for spyware, resources such as Security in-a-Box, as well as digital security helplines or forums.[19]

54. Activists can communicate more securely using virtual private networks, encryption programmes or Tor, a browser designed to increase the anonymity of Internet users. Nonetheless, developers and trainers should caution users that full privacy and anonymity online is never guaranteed. The risk of digital insecurity should also be weighed by larger international human rights actors, both intergovernmental and non-governmental, with regard to their interactions with smaller organizations or individuals.

55. Evaluating the merits and demerits of secure digital encryption does not fall squarely within the mandate of the Special Rapporteur. However, it is certainly a complex issue, with the demands of human rights investigation pulling in both directions, that becomes an issue of concern to this mandate holder when digital insecurity leads directly to victimization, including the threats or actual commission of extrajudicial killings. The use of mainstream social media platforms to share human rights information can pose security risks both for "civilian witnesses" and their subjects.

### 3. Monitoring for protection

56. The proliferation of surveillance and recording afforded by ICTs not only greatly enhances the opportunities to hold individuals to account, as will be discussed below, but can also prevent the commission of violations. Awareness of surveillance can have a significant deterrent effect if coupled with credible accountability regimes, as demonstrated by the use of closed-circuit television surveillance to deter crime. Belief in this deterrent effect is so strong that some activists have been known to pretend to film events, even though their phone battery was dead, as a strategy against abduction or arrest.[20]

57. Perhaps the most directly applicable example of this, and one that addresses a core interest of the Special Rapporteur — the excessive use of force by law enforcement — is the use of body-worn cameras by police officers. A recent study of the use of such technology in California, United States, found that officers' use of force dropped by 59 per cent on the introduction of the cameras, and complaints concerning excessive force dropped by nearly 90 per cent.[21] Other trial projects, involving the use of smartphones as body-worn cameras that transmit video, audio and geolocation information, are being run in Brazil, Kenya and South Africa.[22]

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[19] Resources provided through such programmes as New Tactics in Human Rights (www.newtactics.org) provide spaces for online knowledge exchange on various aspects of human rights work, including digital security.

[20] Stephanie Hankey and Daniel Ó Clunaigh, "Rethinking risk and security of human rights defenders in the digital age", *Journal of Human Rights Practice*, vol 5, No. 3 (November 2013), p. 543.

[21] Barak, Ariel, William A. Farrar and Alex Sutherland, "The effect of police body-worn cameras on use of force and citizens' complaints against the police: a randomized controlled trial", *Journal of Quantitative Criminology* (November 2014).

[22] Graham Denyer Willis and others, "Smarter policing: tracking the influence of new information technology in Rio de Janeiro", *Igarapé Institute Strategic Note 10* (November 2013); see also the Smart Policing initiative, http://en.igarape.org.br/smart-policing/.

58. Just as the preventive impact of closed-circuit television works best where there is cognition of its presence, some argue that body-worn cameras deter violations because of their institutionalized use, whereby the police must issue a warning that incidents are being recorded, which creates cognition of surveillance among both police and civilians.[23]

59. Concerns exist around possible violations of the right to privacy that body-worn cameras may generate, leading to suggestions that they be turned off upon entering a home or when speaking with victims. Others consider that individual officers should not have control over their cameras, so as to reduce opportunities for selective documentation.[24] Concerns also exist with respect to access to and secure storage of the footage. Although questions remain to be answered, many feel that the deterrent effect of police body-worn cameras warrants further deployment.[25] Linked with the potential advantages of the police recording themselves is the equally important protection of citizens' right to record the police.

60. If body-worn cameras bring surveillance to the micro level of interpersonal interactions, at the opposite end of the spectrum is the surveillance potential of remote sensing imagery, either from satellites or drones. Initiatives such as the Satellite Sentinels Project and Amnesty International's Eyes on Darfur campaign have highlighted the possibilities of such mechanisms. Raising awareness among potential perpetrators that vulnerable areas are being watched could deter violations, or at least those that are visible remotely.[26] However, such surveillance is expensive and can involve rather arbitrary decisions about which communities or places to monitor. As with other surveillance methods, the deterrent effect of the technology is connected to both awareness of its existence (making the accompanying media campaign significant) and the credible threat of punitive measures.[27]

61. Those surveillance methods use the threat of accountability in the future to condition behaviour in the present. It is potentially also possible to exploit the capacities of ICTs to use information from the (recent) past to influence what happens in the present. Social media analysis could predict hotspots of human rights violations in real time. For example, the Hatebase database collects data on the vocabulary and incidence of hate speech on social media based on the correlation between hate speech and the risk of genocide and is used to predict regional violence.[28]

62. There are limitations, however, to the possibilities of ICTs as early warning systems. Although "big data mining", i.e. collecting large amounts of data, has a record of being

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[23] The effect of cognition of surveillance was perhaps most memorably elaborated by Jeremy Bentham, but its criminological effects, as well as its potential dangers, have not been technologically realized until recently.

[24] Bracken Stockley "Public support for police body cameras – but who controls on/off switch?" *The justice gap* (March 2014), http://thejusticegap.com/2014/03/body-worn-video-cameras-scrutiny/.

[25] Robert Muggah, "Why police body cameras are taking off, even after Eric Garner's death", *IPI Global Observatory* (11 December 2014), http://theglobalobservatory.org/2014/12/police-body-cameras-eric-garner/, see also Alexandra Mateescu, Alex Rosenblat and Danah Boyd, "Police body-worn cameras", Data & Society Research Institute Working Paper (February 2015), www.datasociety.net/pubs/dcr/PoliceBodyWornCameras.pdf.

[26] Nathaniel A. Raymond and others, "While we watched: assessing the impact of the satellite sentinel project", *Georgetown Journal of International Affairs* (26 July 2013), http://journal.georgetown.edu/while-we-watched-assessing-the-impact-of-the-satellite-sentinel-project-by-nathaniel-a-raymond-et-al/.

[27] Patrick Meier, "Will using 'live' satellite imagery to prevent war in the Sudan actually work?" *iRevolutions* (30 December 2010), http://irevolution.net/2010/12/30/sat-sentinel-project/.

[28] See http://www.hatebase.org/.

good for conflict prediction and prevention, it has been less effective for analysis and actionable transmission.[29]

63. Big data mining and remote sensing work for the prevention of human rights violations also raises methodological and ethical concerns. For example, vulnerable populations could be put at risk by the remote documentation, and thus identification, of their locations and situations.[30] Moreover, potential inaccuracies in the statistical analysis of human rights data arise from selection bias, duplication and constraints on data capture.[31]

### 4. Towards digital due diligence

64. The application of surveillance to prevent violations of human rights may be so effective as to imply that States with the capacity to take advantage of them have a responsibility to do so. Cameras have been used in police vehicles and interrogation rooms and consideration might be given to other contexts in which such surveillance could have a preventive effect (for example, prisons), subject to the limitations imposed by other rights, such as the right to privacy.

65. Other affordances of ICTs can be harnessed by States to fulfil their responsibilities concerning prevention or precaution. For example, there have been instances of States using text messages or calls to warn civilian populations before launching air raids. The recording devices on certain advanced weaponry offer the potential for greater oversight, but that will require more transparency.

66. In the digital space, however, the responsibility of due diligence extends beyond States. Human rights monitoring organizations — both intergovernmental and non-governmental — need to give thought to the consequences of their correspondence or use of information. Traditional understandings of "informed consent" may need to be revisited.

## D. Monitoring and fact-finding

67. As noted above, the particular nature of violations of relevance to this mandate place a premium on fact-finding. Human rights organizations have developed rigorous fact-finding methodologies, not least to protect the credibility of their evidence, and thus their reputations. ICTs and the user-generated content they facilitate have broadened and democratized the process of fact-finding by empowering both spontaneous and solicited "civilian witnesses." The most challenging dimension of this evolution is balancing democratization with a continued, perhaps heightened, requirement for authority and thus for verification of digital evidence.

### 1. Civilian witnesses and video evidence

68. The advantages of video evidence have been appreciated by campaigners for several decades, at least since the Rodney King incident in the early 1990s. The re-purposing of private closed-circuit television footage for public investigations has become

[29] Sheldon Himelfarb, "Can big data stop wars before they happen?" (United States Institute of Peace, 25 April 2014), www.usip.org/publications/can-big-data-stop-wars-they-happen.

[30] See, for example, Harvard Humanitarian Initiative, "The Signal Program on Human Security and Technology" (2013), http://hhi.harvard.edu/programs-and-research/crisis-mapping-and-early-warning/signal-program.

[31] See the work of the Human Rights Data Analysis Group, https://hrdag.org/coreconcepts/.

commonplace.[32] At the international level, the conviction by the International Criminal Court of Thomas Lubanga, which admitted video footage of interviews of child soldiers who had been impressed into his militia, proved that video recordings could be used to fill an evidentiary gap.[33] Of course, it is not only witnesses or subjects of violations who are producing such information, but also perpetrators. Moreover, information does not have to be shared publicly for it to be useful to human rights investigations.

69. While information from civilian witnesses has long been a cornerstone of human rights fact-finding, it has traditionally been gathered by professionals. Either professionals or their trusted contacts would be present during the production and transmission of information from witness to fact-finder during an interview, for example. ICTs enable civilian witnesses autonomously to produce and transmit information.

70. At its most spontaneous, civilian witnessing can occur through widely available consumer tools or platforms. The ubiquity of smartphones enables the capture of visual and auditory information, which can be easily transmitted through digital channels such as social media platforms. The benefit of those production and transmission strategies is that they do not require any particular expertise; the drawback is that they may limit the metadata (such as source, place and time of production) which could be instrumental to verifying the information. Alternatively, applications such as InformaCam and EyeWitness are specifically designed to enhance the metadata supplied with photographic or video information and to maintain the chain of custody.[34]

71. A number of NGOs are already offering training courses to citizen witnesses and trainers on how to produce and transmit material with stronger evidentiary value. WITNESS, Amnesty International, Tactical Tech and the Open Society Justice Initiative are all conducting such activities on a global or regional scale. The training may concern both personal protection issues, such as those concerning digital security, discussed above, and practical information about the kind of detail to capture in witness videos (such as licence plates, uniform numbers or landmarks) and how to share them.[35]

### 2. Crowdsourcing information

72. Somewhere between the traditional methods of soliciting information from civilian witnesses and the spontaneous production and transmission of information by civilian witnesses are the practices of crowdsourcing and crowdseeding. Crowdsourcing involves turning over tasks to a large, unspecified group recruited through an open call but that is not necessarily representative, as such calls privilege the participation of those with resources such as technology, money and time. Crowdseeding is a form of bounded crowdsourcing whereby participants can be randomly sampled for representativeness and equipped with the technology and resources necessary for gathering information. A relationship develops

[32] See, for example, Daoud Kuttab, "Video technology exposing Israeli violations in the West Bank", *Al-Monitor* (8 July 2014), www.al-monitor.com/pulse/originals/2014/07/israel-palestine-cctv-camera-footage-occupation-settlers.html.

[33] Matthew Shaer, "'The media doesn't care what happens here': can amateur journalism bring justice to Rio's favelas?" *The New York Times* (18 February 2015), www.nytimes.com/2015/02/22/magazine/the-media-doesnt-care-what-happens-here.html.

[34] See information about Informacam, https://guardianproject.info/informa/, and New Perimeter, "eyeWitness to atrocities", www.newperimeter.org/our-work/access-to-justice/eyeWitness.html.

[35] See, for example, Kelly Matheson, "Video as evidence: basic practices", *Witness blog* (16 February 2015), http://blog.witness.org/2015/02/video-as-evidence-basic-practices/.

over time between chosen witnesses and the project, with the credibility and trust that such a relationship entails.[36]

73. Besides potentially widening the scope of human rights work, involving civilian witnesses as a crowd could strengthen the effect of human rights advocacy through greater participation and awareness as well as potential corroboration.[37] However, there are risks. By publicly mapping information, crowds may jeopardize vulnerable populations. The techniques may also be used against the human rights community, for example to perform "human intelligence tasks" such as matching faces to photographs of protests.[38]

### 3. Satellite evidence

74. Satellite footage can have a transformative impact on human rights work. Central to the deterrent effect of satellites is the knowledge that, should a violation occur, somebody is going to use the footage to expose it. For example, earlier this year, fact-finders at Amnesty International and Human Rights Watch undertook "change detection" analysis of satellite images of two towns in north-eastern Nigeria that revealed extensive fire damage. The information was cross-referenced with eyewitness testimonies to establish that the fires were part of militant attacks in which hundreds were killed. Although that linking was important because, on their own, satellite images do little to establish culpability and causality, the case highlights the benefits of remote sensing for hard-to-reach areas.[39]

75. Satellite evidence can be combined with other digital processes, such as social media mapping, in order to better convey information. Reports on the origins of missile or artillery attacks or the impacts of drone strikes have relied on satellite photography.[40]

76. At present, much of the satellite imagery relied on for human rights work is owned by commercial operators. This means that, for satellite imagery to be available, there must be a commercial interest in the area and no cloud cover; also, the imagery will tend to be of low resolution. Military-grade satellite imagery has broader coverage and higher resolution, but there is often a reluctance to share information (rather than classified imagery itself) with human rights investigators, even when national security is not at stake.

## E. Evaluating evidence collected using information and communications technologies

77. The flood of information from civilian witnesses can only have evidentiary potential if the information can be gathered and evaluated. It is therefore important that human rights organizations be able to integrate that information into their traditional methods of research

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[36] Patrick Meier, "From crowdsourcing crisis information to crowdseeding conflict zones (updated)", *iRevolutions* (10 July 2012), http://irevolution.net/2012/07/10/crowdsourcing-to-crowdseeding/.

[37] Molly Beutz Land, "Peer producing human rights", *Alberta Law Review*, vol. 46, No. 4 (2009), p. 1115.

[38] Jonathan Zittrain, "The Internet creates a new kind of sweatshop", *Newsweek* (7 December 2009), www.newsweek.com/internet-creates-new-kind-sweatshop-75751.

[39] Christoph Koettl, "The story behind the Boko Haram satellite images", *Amnesty International UK Blogs* (17 January 2015), www.amnesty.org.uk/blogs/ether/story-behind-boko-haram-satellite-images.

[40] Bellingcat, "Origin of artillery attacks on Ukrainian military positions in Eastern Ukraine between 14 July 2014 and 8 August 2014" (17 February 2015), www.bellingcat.com/news/uk-and-europe/2015/02/17/origin-of-artillery-attacks/; and Forensic Architecture, "Drone strikes: investigating covert operations through spatial media", www.forensic-architecture.org/case/drone-strikes/.

and analysis, especially given the importance of reporting credibility. However, evaluating digital content produced by civilian witnesses can be a challenge, including with regard to the identification of relevant information, and verification and storage of that information. Technological developments as well as initiatives in information evaluation practices may help to address those challenges.

### 1. Problem of volume

78. The proliferation of digitally produced and transmitted civilian witness information means that identifying relevant information can be an overwhelming task. Using networks to crowdsource the filtering process can be an intermediary step, but it will likely be necessary to harness the analytical affordances of digital ICTs to address their own "signal-to-noise ratio" problem. One way is through the automated cleansing of large datasets of potentially relevant information. For example, CrisisNET aims to collect and standardize real-time digital crisis data from thousands of sources so that researchers can search quickly and efficiently.[41] Although machines cannot replace human expertise in the evaluation of human rights information — for assessing the relevance of information for evidence is an ultimately subjective task —, technology can help human rights monitors to concentrate on the most important material. More research is needed in this regard.

79. There will probably always be a need to curate digital content for monitoring and consumption by a wide audience of interested parties. Such curation will involve a combination of automation and traditional fact-finding or verification skills. One successful model is the WITNESS Human Rights Channel, which uses material that is verified in partnership with the social media news agency Storyful.

### 2. Problem of transience

80. Because much of the material of relevance to human rights investigations could be online for only a very limited time (owing to pressures either on the uploader or the platform not to host content of a certain type),[42] it is important that investigators have the capacity to capture all the information that might be needed and to store it securely. The development of guidelines for national investigators as well as human rights monitors should be a priority.[43]

81. The storage of material for human rights investigations can be a security risk for activists. Applications such as Eyewitness and International Evidence Locker have been designed to allow witnesses to upload evidence to a cloud-based repository and to use or delete it as best suits their circumstances. Those applications also allow secure transmission of information to target audiences while maintaining the metadata of the information as well as the information itself. Nonetheless, collaboration between investigators and technology corporations will remain a vital consideration.

### 3. Problem of verification

82. Although sometimes raised as a major impediment to the embrace of digital evidence, verification is not a new issue: it concerns the conventional institutional need to establish the credibility of a source and the accuracy of its information before acting on or

[41] See http://crisis.net/about/.

[42] Madeleine Bair, "Navigating the ethics of citizen video: the case of a sexual assault in Egypt", *Arab Media & Society*, vol. 19, (2014), http://arabmediasociety.com/?article=844.

[43] Resources exist to guide activists concerning the archiving of their material, for example, see http://archiveguide.witness.org/. The Office of the Prosecutor of the International Criminal Court is currently finalizing guidelines for investigators.

staking one's reputation to a claim. While the nature of the information being verified and the specific techniques are shifting rapidly as ICTs evolve, the fundamentals of verification remain constant: identifying and corroborating the content and provenance of information received.

83. Verification usually involves checking the origin, source, time and place of the information in question, as well as the chain of custody. Fact-finders must take time to establish the identity of the source, assess the file for metadata indicators, then cross-reference those with other sources. A new set of methods, often referred to as information forensics, is emerging, but many elements of the process still require human expertise and painstaking checks, akin to old-fashioned investigation.

84. The witness may provide information concerning the time, place and content in an interview, or, alternatively, may include that information in the file. The former method underlines the importance of cross-fertilization between the methodology of the second and third generations of fact-finding and the extent to which the sources of one can bolster the authority of the other, while the latter can occur either during the production process, for example by verbalizing the location and date, or through the transmission process. The information may also be evident through physical landmarks (such as road signs or geological features), weather conditions, clothing, weapons or dialect captured in the digital file, or it may also be identified through the metadata automatically embedded in the file, such as the time stamp. That information can be corroborated and cross-referenced against other digital files and evidence, including satellite images. Several videos of the same incident can be time synced so as to provide a multiperspective video timeline.[44]

85. Recognition of the need for expertise concerning digital verification is growing. The more knowledge about information forensics that human rights fact-finders have, the more comfortably and quickly they will be able to use digital information from civilian witnesses. The *Verification Handbook*, published in 2014, quickly became a reference point for humanitarians and human rights fact-finders.[45]

86. Increasing verification knowledge among civilian witnesses is likely to ease the verification process. WITNESS, for example, provides a guide on what information to include in videos documenting human rights violations.[46]

87. Another strategy to facilitate verification is through initiatives that support either the provision of information for verification or the evaluation of that information. Such initiatives have been referred to as "verification subsidies" and may incorporate human participation or designed technologies.[47] Applications such as InformaCam automate the addition of verification cues at production and prompt their inclusion during transmission. Alternatively, the power of the crowd can be used retrospectively, as is done, for example,

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[44] See, for example, the Rashomon Project, http://rieff.ieor.berkeley.edu/rashomon/about-rashomon/.

[45] Craig Silverman (ed.) *Verification Handbook: An ultimate guideline on digital age sourcing for emergency coverage* (European Journalism Centre, 2014), http://verificationhandbook.com/.

[46] See "A field guide to enhancing the evidentiary value of video for human rights", http://verificationhandbook.com/book/appendix.php.

[47] Ella McPherson, **Error! Hyperlink reference not valid.** "Digital civilian witnesses of human rights violations: easing the tension between pluralism and verification at human rights organizations" in Lind (ed.), *Producing Theory 2.0: The Intersection of Audiences and Production in a Digital World*, vol. 2 (forthcoming 2015).

with Veri.ly.[48] Alternatively, Checkdesk, a platform designed for individual newsrooms, allows for collaborative and transparent verification among members of a bounded crowd.

88. While the technical difficulty of verification should not be exaggerated, its importance cannot be overstated. If used by a human rights organization, unverified material can lead to the degradation of the organization's credibility, but hoaxes can also create combustible situations — so-called "digital wildfires" — that can lead to violence.[49] Many States already have laws limiting freedom of expression for reasons such as incitement of violence or panic, but they are struggling with how to apply those laws effectively to online activities. Any regulation in that area will remain complex and controversial; it has been suggested that the online community itself must fill the gap, with important roles for community curators and moderators.[50] The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance reported to the Human Rights Council in 2014 on the complex challenges for his mandate posed by the Internet and social media (A/HRC/26/49). In addition to pointing out policies developed by some of the major social media sites, he also highlighted the importance of civil society initiatives.

### 4. Using digital evidence

89. Most of the information that can be captured through the streams described above is "convenience data", but its value to a human rights investigation cannot always be immediately assessed. Moreover, it is important not to privilege images as much can also be learned from blogs or micro-blogs, which can be used to corroborate other sources.

90. While verification subsidies potentially speed up the verification process, using them requires digital literacy about verification among human rights fact-finders and civilian witnesses. It is unclear how knowledge about producing and transmitting information effectively, safely and ethically for evidence will be diffused among civilian witnesses, particularly those who are acting in a truly spontaneous manner. Pre-emptive steps to train human rights monitors will favour the prepared, but it is often the accidental witnesses who are best placed to be truly informative.

91. For that reason, organizations such as WITNESS advocate for the standard inclusion of an "eyewitness" or "proof" mode, resembling InformaCam, in preloaded photo and video applications on smartphones and in social media platforms.[51] The inclusion of those features in mainstream applications and platforms means that civilian witnesses are more likely to know about them and thus to use them.

## F. Use of information and communications technologies by human rights mechanisms

92. Thus far, the present report has addressed the applications of ICTs in human rights work in general, rather than their use by the international machinery for the protection of human rights. It is important that the international community be open to these new

[48] See Victor Naroditskiy, "Veri ly – getting the facts straight during humanitarian disasters", (August 2014), www.software.ac.uk/blog/2014-08-13-verily-getting-facts-straight-during-humanitarian-disasters.

[49] This issue was raised in the World Economic Forum *Global Risks* report, 8th ed. (2013), pp. 23–27.

[50] See Lee Howell, "Only you can prevent digital wildfires" (8 January 2013), www.nytimes.com/2013/01/09/opinion/only-you-can-prevent-digital-wildfires.html.

[51] Sam Gregory "How an Eyewitness mode helps activists (and others) be trusted", *WITNESS Blog* (3 March 2014), http://blog.witness.org/2014/03/eyewitness-mode-helps-activists/.

methodologies, otherwise advocacy organizations and civilian witnesses will find it difficult to take full advantage of existing accountability mechanisms. As noted above, technological evidence must not be seen as the endpoint — without meaningful accountability it is just more sound and fury — and it is therefore vital that official channels designed to facilitate accountability for human rights violations be open to this type of evidence.

93. The broader United Nations community has invested in harnessing the potential of ICTs, particularly in the area of crisis information management (A/69/517). The United Nations Office of Information and Communications Technology has, in conjunction with the ICT4Peace Foundation, coordinated the Crisis Information Management Advisory Group, which has become a forum to discuss technological developments in humanitarian aid and crisis information management.[52] The Office for the Coordination of Humanitarian Affairs (OCHA) has reviewed the impact of ICT-enabled networks on humanitarian relief and has, since then, undertaken a number of collaborative projects to take advantage of the power of the crowd.[53] Meanwhile, the Global Pulse project is a major undertaking on the humanitarian impact of big data.[54]

94. In 2014, the Department of Peacekeeping Operations requested the Expert Panel on Technology and Innovation in United Nations Peacekeeping to recommend ways in which technology and innovation could enhance their operational effectiveness. The panel issued its final report in February 2015,[55] in which it recommended that, among other things, the Security Council create a special technical mission to use technical audio, visual, monitoring and surveillance technologies to inform decision-making.

95. The United Nations human rights mechanisms have not completely ignored the advances of ICTs. Several of them have created successful social media presences as part of their promotional engagement strategies and campaigns to reach millions of users worldwide. Although the promotional uses of digital ICTs are significant, the Special Rapporteur will now consider the engagement of various international and regional human rights mechanisms that use ICTs for fact-finding and accountability.

### 1. Special procedures and other mechanisms of the Human Rights Council

96. This report was in part motivated by the Special Rapporteur's investigation of video evidence of executions at the end of the civil war in Sri Lanka (see A/HRC/17/28/Add.1, appendix). In that instance, the Special Rapporteur was able to provide impetus to a broad coalition pressing for accountability by independently seeking out technical experts to comment on the metadata of the videos, the ballistics of the weapons shown in the videos and the movement of the bodies. Given the rapid developments in the field, it is quite possible that such expertise is easier to find today, however, the capacity of OHCHR has not changed greatly. Special procedures mandate holders would benefit from in-house technical knowledge for selecting the best experts for specific tasks.

97. As noted above, the verification of user-generated content is fundamental to reaping the advantages of ICTs in terms of broadening access to and the scope of human rights work. However, it is important that verification not be viewed as a barrier to the use of digital evidence. The technical difficulty of verification is sometimes exaggerated and used

[52] See http://ict4peace.org/crisis-information-management-advisory-group-cimag-retreat/.

[53] OCHA Policy and Studies Series, *Humanitarianism in the Network Age: including world humanitarian data and trends 2012*, (2013), https://docs.unocha.org/sites/dms/Documents/WEB%20Humanitarianism%20in%20the%20Network%20Age%20-%20single.pdf.

[54] See http://www.unglobalpulse.org/.

[55] See http://www.performancepeacekeeping.org/offline/download.pdf.

as an excuse not to engage with such evidence. Verification should be demystified within the international human rights machinery, so that the advantages offered by digital evidence can be more fully embraced.

98. With respect to the dangers of ignorance concerning digital security, it is noteworthy that many Human Rights Council mechanisms encourage individual contact through insecure generic email addresses, with no warnings concerning security or suggestions of alternatives. While offering such contact points is a laudable effort to broaden access to its mechanisms, the Council is arguably failing in its duty of care by failing to adequately warn individuals or groups of the potential risks that they may be taking.

99. Of course, the impression should not be given that the special procedures of the Council are closed off to information from the new data streams discussed in the present report. Indeed, much of the NGO reporting on which special procedures' communications are based derives information from such sources. However, the fact that the Council is not yet open to weighing such evidence or reporting places it at risk, over the coming years, of isolation from the broader human rights community with which it has done so much to engage in the past.

### 2. National and international commissions of inquiry

100. Various national investigations have made use of digital evidence. The finding that the death of Ian Tomlinson during a demonstration in London in 2009 was an unlawful killing hinged on a witness video that was tracked down and handed over to the Independent Police Complaints Commission by an investigative reporter. Also, the ongoing inquiry into the shootings at Marikana, South Africa, received ostensibly probative video evidence that the South African Human Rights Commission has had synchronized by a technological expert.[56]

101. At the international level, OHCHR has partnered with the Operational Satellite Applications Programme of the United Nations, and with various external partners on an ad hoc basis, to use both satellite and video evidence in the work of international commissions of inquiry.[57] As discussed above, when combined with other techniques of human rights monitoring, satellite imagery can provide extremely valuable information for inclusion in reporting to the Human Rights Council.

102. The Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea made use of both satellite imagery and clandestinely recorded videos and photographs in order to demonstrate the existence of several political prison camps (see A/HRC/25/63). The Commission relied on the videos and photographs to the extent that they could confirm their authenticity, and, with respect to satellite imagery, on commercially available footage. The Commission noted that higher resolution satellite imagery produced by more technologically advanced States would, almost certainly, have provided further information. Unfortunately, despite requests, those images were not made available to the Commission (see A/HRC/25/CRP.1, para. 60–61).

103. The Independent International Commission of Inquiry on the Syrian Arab Republic has also made use of a certain amount of satellite and digital material, as one might expect

[56] See the "Written submissions of the South African Human Rights Commission regarding 'Phase One'" in the Marikana Commission of Inquiry (29 October 2014), www.sahrc.org.za/home/21/files/SAHRC%20PHASE%20ONE%20FINAL%20WRITTEN%20SUBMISSIONS.pdf.

[57] See http://www.unitar.org/unosat/.

from a body monitoring one of the most documented conflicts in history.[58] In conducting its special inquiry into the Al-Houla killings, for example, the Commission examined satellite imagery to review access points to an area where killings had occurred, as well as to review statements made by interviewees and to assess claims that the Government had razed civilian areas in Damascus and Hama.[59] The Commission mentioned instances where it had received or found video evidence supporting allegations of torture or other forms of ill-treatment or footage of killings, but noted when it could not verify those recordings.[60] Video material has also been directly gathered by the United Nations Supervision Mission in the Syrian Arab Republic and referred to in reports of the Commission.[61] The Commission also undertook preliminary reviews and conducted forensic analyses of 26,948 photographs allegedly taken between 2011 and 2013 in government detention facilities.[62] In more recent reports, the Commission cited a number of videos that had been created and distributed by ISIS; those videos have been a challenge to the current methodology of using videos only to substantiate events for which there are other witness testimonies, but the Commission has given them weight as confessions.[63]

### 3. International criminal accountability

104. Information derived from digital sources has become increasingly important to international tribunals, including several of those established during the 1990s, and now also the International Criminal Court. In assessing the importance of such evidence to moving forward its work, the Court has been proactive in establishing working methods that can accommodate such evidence. In 2012 and 2013, the Court encouraged partners to exchange ideas and expertise on strategies to improve the capacity of investigators and prosecutors to gather and analyse digital evidence concerning serious international crimes.[64]

105. One of the recommendations from that process was that the Office of the Prosecutor should "hire specialists trained in advanced cyberinvestigation techniques and familiar with cutting-edge technologies" and who would have "experience and credentials specific to digital investigations, including computer and smartphone forensics, online investigations, data storage and management, advanced cyberinvestigation techniques, and superior knowledge of digital security." It was suggested that this would "go a long way toward building a robust in-house capacity for vetting digital data and extracting quality evidence."[65] On the basis of that consultation, the Office of the Prosecutor appointed a specialist in the verification of digital material to work as a "cyberinvestigator", as part of its team of other investigators from legal and law enforcement backgrounds.

106. Recognizing the transient nature of much of the relevant material, the Office of the Prosecutor has adopted the practice of surveying digital evidence that is available when the preliminary examinations are opened. As noted above, the Court has developed guidelines for use by investigators concerning best practices with respect to the retrieval, storage and

[58] See Marc Lynch, Deen Freelon and Sean Aday, *Syria's Socially Mediated Civil War* (United States Institute of Peace, 2014).

[59] See A/HRC/21/50, annex IV, and A/HRC/22/59, annex XIII, para. 18.

[60] A/HRC/21/50, annex VIII, para. 31; A/HRC/22/59, annex V, para. 22.

[61] A/HRC/21/50, annex V, para. 14.

[62] A/HRC/27/60, para. 26.

[63] A/HRC/28/69 and Corr.1, annex II, paras. 21–25.

[64] See Human Rights Center, University of California, *Beyond Reasonable Doubt: Using scientific evidence to advance prosecutions at the International Criminal Court* (Berkeley, 2012); and *Digital fingerprints: Using electronic evidence to advance prosecutions at the International Criminal Court* (Berkeley, 2014).

[65] See Human Rights Center, *Digital Fingerprints*, p. 11 (see footnote 64).

investigation of digital evidence, including the capture of websites and seizure of hard drives.

## III. Conclusion

107. **ICTs have had a profound effect on the impact and character of human rights work. However, it is important that the process not be taken too far, especially in information-scarce environments, where it will be increasingly important to resist the temptation to privilege digital material. While new technology may raise expectations for information, it should be noted that traditional human rights monitoring and reporting make no claim to comprehensiveness, and neither should analysis of new ICT-enabled data streams. The latter should not be viewed as a shortcut, but rather as part of a complementary process that fits into pre-existing strategies used by human rights actors.**

108. **It is also important that ICTs be embraced with due acknowledgement of their risks. While in many cases, technology can be a vehicle for pluralism, issues of a digital divide remain. In order to benefit from digital protection measures, human rights defenders need to know about them. The digitally enabled promotion of human rights may contribute to a culture of awareness, but if promotion resources for those initiatives are diverted away from more traditional channels, this will be to the detriment of vulnerable groups who are not online.**

109. **It is also important to acknowledge the importance of ownership and control of the mechanisms of digital ICTs. The use of digital evidence often depends on the willingness of technology corporations to host, store and facilitate searches for this information. Moreover, in some States, access to externally owned commercial social media platforms, such as Twitter, Facebook and YouTube, are blocked. In others, entire communication networks have been shut down to suppress the flow of information.**

110. **Keeping up with digital literacy and paying for new technology can be difficult for human rights organizations. One solution would be collaboration between ICT specialists and human rights experts to develop, implement and even commercialize new applications for human rights, or to negotiate low-cost or free licensing for the use of existing solutions. Donors are interested in funding technological developments, but reportedly can focus more on the technology than on the training that is required to deploy it. However, technology can be useless or even dangerous without training. As one observer noted, "sooner or later, all technology problems become education problems."[66]**

111. **The collaborative framework can be extended further. Indeed, a wide range of organizations are willing to assist international human rights mechanisms in more fully benefiting from ICTs. Coordination efforts have been made in that regard, but it seems that the human rights community is currently far behind other international agencies — most notably in terms of crisis response — in fully realizing that potential.[67]**

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[66] Christopher Neu, "Mobile applications for atrocity prevention require mobile students", *TechChange*, (19 February 2013), http://techchange.org/2013/02/19/mobile-applications-for-atrocity-prevention-require-mobile-students/.

[67] In the humanitarian response context, Digital Humanitarian Network has produced two reports aimed at both sides of such partnerships: see http://digitalhumanitarians.com/content/guidance-

112. **What is needed to support those United Nations human rights mechanisms that respond directly to evidence that is often gathered by third parties is in-house capacity to conduct a triage-like function on digital material, as an initial assessment of the likely value of the source, before passing it on to external experts for full verification or other technical assessment. Such a "first opinion" and liaison capacity within the secretariat of international mechanisms, including the special procedures, would encourage greater use of potentially valuable information.**

113. **Of course, technological advances in gathering evidence remain only as effective, in real terms, as the accountability mechanisms to which they contribute and which are, in large part, external to the technology. In that sense, the improved information streams offered by ICTs are necessary, but not sufficient, for better protection of human rights, including the right to life. That underlines the importance of international human rights mechanisms, including the Human Rights Council and its special procedures, being able to fully interact with such materials. Some human rights NGOs — the so-called "second generation" — are keeping pace with the innovations of the "third generation." It is vital that the "first generation" catch up.**

# IV. Recommendations

## A. To the United Nations

114. **OHCHR should appoint, on a consultancy basis and as soon as possible, a digital content specialist to provide advice with respect to information received from or produced by civilian witnesses and to serve as an interface with external networks of expertise in that area. That should be seen as a stopgap solution to ensure quick movement on that front. At the same time, OHCHR should, with the assistance of the appointed specialist, set about establishing longer-term capacity.**

115. **As international commissions of inquiry and fact-finding missions are ad hoc bodies that are likely to receive a large and increasing quantity of digital evidence, consideration should be given to expertise for analysing such material in the staffing requirements for those mechanisms.**

116. **More broadly, OHCHR should take steps to improve awareness of and to familiarize its staff and processes at all levels with the requirements of digital security. That involves the development of minimum standards of due diligence with respect to the digital security of sources. Guidelines for United Nations staff on the ethics of using information from open sources, especially social media, should also be developed in consultation with relevant partners.**

## B. To regional human rights mechanisms

117. **Regional human rights mechanisms should evaluate their capacity to receive and use digital material and to promote best practices in terms of digital security. Where necessary, they should liaise with OHCHR to increase that capacity.**

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collaborating-formal-humanitarian-organizations, and http://digitalhumanitarians.com/content/guidance-collaborating-volunteer-technical-communities.

## C. To States

118. States should respect and, where necessary, protect the individual's right to make a recording of a public event, including the conduct of law enforcement officials, and to "record back" an interaction in which he or she is being recorded by a State agent.

119. States should consider measures that may be taken innovatively to use ICTs to prevent violations of the right to life by its agents, particularly the excessive use of force by law enforcement officers, or in custodial settings. That could include, but is not limited to, innovations such as body-worn cameras, with due consideration given to the necessary safeguards of the right to privacy.

120. States with advanced capacity to capture satellite imagery should consider providing at least derived information to international human rights mechanisms that have such needs, if necessary, on a confidential or non-attributable basis.

## D. To civil society organizations and academic institutions

121. While remaining open to developments from a rapidly evolving field of technological innovation, civil society organizations should adopt an evidence-based assessment of the benefits of new ICT-enabled mechanisms. In collaboration with academics, they should concentrate resources on those areas where ICTs genuinely afford greater capacity, while maintaining the vital work they do using other, more traditional methods. Academics and human rights organizations should also collaborate to prioritize research in areas where it is needed most, for example to address the "volume challenge".

122. Those responsible for human rights curricula and training programmes should consider including modules on the effective use of ICTs to secure human rights. Larger organizations should continue to seek to assist those with more limited digital resources.

## E. To donors

123. Donors should acknowledge that technological solutions to human rights problems can only be as successful as the training that accompanies them. In addition to expecting rigorous and honest appraisals of the utility and impact of new applications or devices, donors should also mainstream and support efforts to improve digital literacy and digital security awareness among those communities that most need it.

## F. To technology and software corporations

124. Developers should favourably consider the inclusion of an "eyewitness" or "proof" function in mainstream camera applications that gives users the option to include the metadata and establish the integrity of the file, so as to make video evidence valuable, without the need to have previously downloaded a specialized application.

125. Social media platforms should devise a process whereby user-generated content that may be of relevance to human rights investigations, but that has been removed from platforms because of community standards, can remain available to fact-finders.

United Nations A/HRC/29/37/Add.1

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# Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns

**Addendum**

## Mission to Papua New Guinea (3 to 14 March 2014)*

*Summary*

The Special Rapporteur on extrajudicial, summary or arbitrary executions conducted an official visit to Papua New Guinea from 3 to 14 March 2014. This report presents his main findings and proposes recommendations to ensure better protection of the right to life in Papua New Guinea.

Many formal steps have already been taken to ensure the protection of human rights and the right to life in Papua New Guinea, but they are not properly implemented.

A package of reforms is required; a piecemeal approach will not work. The Special Rapporteur recommends, inter alia, that Papua New Guinea establish: a national human rights institution which could help to facilitate the introduction of human rights in school curricula and police training; a centre for human rights within the University of Papua New Guinea; and witness and victim protection programmes; as well as encourage the establishment of a human rights-focused non-governmental organization. Also, a larger and better trained police force would strengthen the certainty of conviction for criminal offences, which, in turn, would contribute to countering calls for the reintroduction of the death penalty.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission only.

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## Annex

*[English only]*

# Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, on his mission to Papua New Guinea (3 to 14 March 2014)

## Contents


| | | *Paragraphs* | *Page* |
|---|---|---|---|
| I. | Introduction | 1–5 | 3 |
| II. | Context | 6–13 | 3 |
| III. | Systemic challenges | 14–19 | 4 |
| IV. | Use of force by the police | 20–34 | 5 |
| | A. Community Auxiliary Police | 32 | 7 |
| | B. Correctional services | 33–34 | 8 |
| V. | Private security firms and the right to life | 35–41 | 8 |
| VI. | Manus Island Regional Processing Centre | 42–48 | 9 |
| VII. | Killings by non-State actors | 49–63 | 10 |
| | A. Violence related to sorcery and witchcraft accusations | 49–55 | 10 |
| | B. Killings resulting from tribal fighting | 56–59 | 11 |
| | C. Domestic violence | 60–63 | 12 |
| VIII. | Institutions and procedures for protection and accountability | 64–86 | 12 |
| | A. The police | 64–72 | 12 |
| | B. Witness and victim protection | 73–74 | 14 |
| | C. Court proceedings | 75–78 | 14 |
| | D. National human rights institution | 79 | 15 |
| | E. Access to lawyers | 80–81 | 15 |
| | F. Human rights-focused non-governmental organizations | 82–83 | 15 |
| | G. University of Papua New Guinea | 84 | 16 |
| | H. United Nations | 85–86 | 16 |
| IX. | Death penalty | 87–97 | 16 |
| X. | Role of extractive industries | 98–99 | 18 |
| XI. | Killings during the Bougainville crisis | 100–103 | 19 |
| XII. | Conclusion | 104–105 | 19 |
| XIII. | Recommendations | 106–124 | 20 |
| | A. To the Government of Papua New Guinea | 106–119 | 20 |
| | B. To the United Nations | 120 | 21 |
| | C. To civil society and other actors | 121–124 | 21 |

# I. Introduction

1. At the invitation of the Government of Papua New Guinea, the Special Rapporteur on extrajudicial, summary or arbitrary executions conducted an official visit to the country from 3 to 14 March 2014. The aim of the visit was to examine the level of protection of the right to life in Papua New Guinea, including government efforts to prevent unlawful killings and to ensure justice and redress in such cases. The report focuses on the situation at the time of the visit and reference is made to subsequent developments. The draft report was sent to the Government on 6 February 2015.

2. The Special Rapporteur thanks the Government of Papua New Guinea for its invitation and for the open cooperation and support provided during his visit by officials from the Department of Foreign Affairs, particularly, the late Dennis Bebego, former Acting Director-General of the Multilateral Development and Cooperation Division. He is also grateful to the United Nations Country Team, in particular, the Resident Coordinator and the staff of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Papua New Guinea for their invaluable support during both the preparation and conduct of his visit.

3. The Special Rapporteur visited Port Moresby (National Capital District), Goroka (Eastern Highlands Province), Kundiawa (Simbu Province), Lae (Morobe Province), Manus Island and Buka (Autonomous Region of Bougainville). He met with the Minister of Justice and Attorney-General, the Minister of Police, secretaries, commissioners and high-level officials of the Ministry of Foreign Affairs, the Royal Papua New Guinea Constabulary (RPNGC) and the Office of the Public Prosecutor. He also met with the Chief Justice, the Public Solicitor and the Chief Ombudsman, and held discussions with the judge in charge of the Human Rights Track of the National Court. In the provinces and the Autonomous Region of Bougainville, he met with governors, provincial administrators, provincial police commanders, other police force officials, representatives of the Office of the Public Prosecutor and the Office of the Public Solicitor, and judges, magistrates and clerks of the National Court, district courts and village courts. The Special Rapporteur visited the Regional Processing Centre on Manus Island and the Barawagi Prison in Simbu.

4. The Special Rapporteur held meetings with representatives of non-governmental organizations (NGOs), human rights defenders, academics, as well as victims of extrajudicial, summary or arbitrary executions and their relatives.

5. The Special Rapporteur expresses regret that no official of the private security firm G4S was available to meet with him in Port Moresby and Manus Island, and that he was not given the opportunity to meet with asylum seekers at the Manus Island Regional Processing Centre — the Australian government offshore immigration detention and processing centre.

# II. Context

6. Papua New Guinea faces a high level of violence, which often has lethal consequences. The Special Rapporteur encourages the Government to build a robust and effective system to break the cycle of violence and to take measures to protect the right to life.

7. The authorities must have the political will to make significant strides to protect human rights, including the right to life. Although there are many challenges, during his visit, the Special Rapporteur identified some positive factors.

8. Those factors include the fact that:

(a) The Constitution and legal system provide strong protection, at the formal level, for civil and political rights, coupled with remarkably open provisions and procedures on legal standing;

(b) The judiciary is well-respected;

(c) A significant percentage of government and other officials and leaders is open to moving forward the protection of human rights in the country;

(d) The country has a strong development trajectory and potentially an important role to play in the broader regional arena; and

(e) The Government has recognized and acknowledged the need for change; the current challenge is implementation.

9. Papua New Guinea has immense natural resources that are increasingly being exploited as the driver of one of the fastest growing economies in the world.[1] The country is becoming increasingly integrated into and asserting itself in the international economy. Internal and external pressure to follow and uphold international human rights standards is increasing. Now is the time to set a solid framework for sustained growth and an inclusive society, based on human dignity and the rule of law.

10. A piecemeal approach that addresses only parts of the system will not suffice. Rather, a visionary and comprehensive process, driven by the leaders of Papua New Guinea, with the support of the international community is needed. No single reform measure that is currently being implemented by the Government, or proposed in this report, can take Papua New Guinea society forward on its own; a number of steps must be taken simultaneously in order for the synergy to make a difference.

11. It is particularly important to ensure that the institutions and procedures required to steer Papua New Guinea society in the right direction are in place. While some such institutions and procedures already exist, most are weak or lacking. The Government is taking steps to strengthen key institutions, including the judiciary, the police and national oversight mechanisms, and those efforts should be continued.

12. Several interlocutors indicated that progress has begun in the area of domestic violence, owing to concerted joint efforts of activists, government officials and other stakeholders. Although the level of domestic violence remains high, legislative and structural developments, such as family sexual violence units in police stations, family support centres in hospitals and various awareness-raising campaigns, provide national leadership in effecting behavioural change.

13. Although the mandate of the Special Rapporteur focuses on a particularly dark side of society, the purpose of the mandate is to facilitate a process of comprehensive change which, in the case of Papua New Guinea, is both necessary and achievable with adequate political leadership.

## III. Systemic challenges

14. At around seven million, the population of Papua New Guinea is relatively low for such a large landmass.[2] The population is predominantly rural (only 13 per cent

[1] See www.businessinsider.com/worlds-fastest-economies-2012-10?op=1

[2] See http://data.worldbank.org/indicator/SP.POP.TOTL; and http://data.worldbank.org/indicator/EN.POP.DNST?order=wbapi_data_value_2012+wbapi_data_value+wbapi_data_value-last&sort=asc.

urbanization) and fragmented,[3] and the level of literacy is around 63 per cent.[4] A large part of the country is difficult to reach and many communities are mostly closed to the outside world. The country has more than 800 distinct languages and over 200 cultural groups.

15. During his visit, the Special Rapporteur encountered numerous references to the role of the "wantok" system in Papua New Guinea society. "Wantokism" is the social glue, the kinship of people from the same clan or group, whose customs are often stronger than that of the law and the State, particularly in remote areas of the country, where the presence of State institutions is limited.

16. There were also many references to the practice of "payback" between individuals or groups which often result in killings. "Payback" is an act of retaliation carried out usually by a group whose members have been harmed on the individual, his or her relatives or group that perpetrated the harm. In many cases, the harm is considered resolved once the perpetrator has paid a financial compensation to the family of the victim, which may, in some instances, benefit only the family and not the victim or society at large. In the context of the right to life, the practice of payback can lead to impunity in the case of murder.

17. Impunity is further enhanced by the fact that many payback cases are not reported, due to the sense of solidarity among the group, so that a member may not report the acts of other members of the group or testify against them. Witnesses are often reluctant to testify out of fear of retaliation from within the group. The police, prosecutors and local magistrates are part of their own group, outside of their careers, and can be influenced or pressured in their professional duties.

18. Of special importance to the right to life is the strong belief in the power of the supernatural, particularly sorcery and witchcraft, among large parts of the population and the consequent perceived need to defend oneself and one's group against such powers — often by using deadly force.

19. Papua New Guinea is in many ways a country of paradoxes. Although there are many challenges, positive elements, such as the close ties that bind people, respect for each other and commitment to the common good must be recognized and acknowledged.

## IV. Use of force by the police

20. The right to life is protected in section 35 of the 1975 Constitution of the Independent State of Papua New Guinea. However, section 35 also provides that the right to life may be limited in certain circumstances, including as the result of the use of force that is reasonable in the circumstances of the case and is permitted by any other law: for the defence of any person from violence; to effect a lawful arrest or to prevent the escape of a lawfully detained person; to suppress a riot, an insurrection or a mutiny; to prevent a person from committing an offence; to suppress piracy or terrorism or similar acts; or as a result of a lawful act of war. Section 35 expressly states that the use of reasonable force in the aforementioned scenarios does not absolve anyone from any liability in respect of killing another.

21. Section 14 (1) (c) of the Arrest Act, 1977, enables authorized persons to use all reasonable means to effect an arrest where a suspect resists arrest. However, section 14 (2) limits the use of force to that which is reasonable in the circumstances, and any force greater than what is reasonable is not justified. Similar provisions are contained in

[3] See http://apps.who.int/gho/data/?theme=country&vid=15600.
[4] See http://apps.who.int/gho/data/?theme=country&vid=15600.

section 16 (1) (b) and (2) of the Act, which relate to private citizens effecting arrests, and section 17 (1) (b) and (2), which concern the duties of a policeman after an arrest. Sections 16 and 17 of the Arrest Act provide that when a private citizen or policeman arrests a suspect, the suspect must be taken to a police station and only force that is reasonable in the circumstances may be used to prevent the suspect from escaping. Moreover, the excessive use of force is outlawed by section 281 of the Criminal Code Act, 1974, which proscribes "the use of more force than is justified by law under the circumstances", including in circumstances where force is lawfully used. International law clearly states that only such force as is necessary and proportionate to the circumstances may be used and, in extreme circumstances, intentional lethal force may only be used where it is absolutely necessary in order to protect life. Those provisions are open to different interpretations.

22. During his meeting with the Police Commissioner of RPNGC, the Special Rapporteur was informed that new standing orders had been developed and would soon be issued. The Police Commissioner indicated that a copy of the orders would be forwarded to the Special Rapporteur to analyse its compliance with international standards. The Special Rapporteur has not yet received a copy of the new orders. While new standing orders are important, the ultimate test will be their impact.

23. From interviews with the police and members of the public, it appears that neither the police nor the public has a clear idea of when police officers are allowed to fire live ammunition. Several allegations have been made of police using excessive force against suspects during arrest, interrogation and pretrial detention, and when carrying out raids of illegal informal settlements. The Special Rapporteur was deeply concerned at reports that police officers who use excessive force which results in death are rarely disciplined, suspended from office or prosecuted in court.

24. Another area of concern is the treatment of individuals in police custody. The Special Rapporteur was alerted to cases where police had brought wounded individuals to police lock-ups and failed to provide them with medical assistance. It seems that, in practice, proper records are often not kept of who are held in the cells, why they are held, for how long and their medical conditions. The Papua New Guinea authorities are required to ensure the protection of persons in custody as States are held to a high level of diligence to protect the lives of detainees and must take adequate measures to do so.[5] It is hoped that the new cell management system will bring some relief.

25. It is widely perceived that police in Papua New Guinea are prone to using high levels of unwarranted force. Several reasons were put forward, including poor working and living conditions of the police; understaffing; the perception by police that they must assert themselves in a violent environment; cases of misuse of the wantok system where police officers may use their position to protect their relatives; corruption; low remuneration; lack of training on human rights standards regarding the use of force; and lack of accountability. The Special Rapporteur heard the testimony of one individual who was accused by the Commander of a police station in the area of performing sorcery, which killed the Commander's son. The Commander allegedly carried out a series of attacks, which destroyed four of the accused's houses.

26. It is alleged that many police officers have at least one firearm in their possession at all times, even when off duty. The RPNGC Administrative Review Committee raised concern about this in its September 2004 report. It stated that the rules and regulations for

[5] See Human Rights Committee, communication No. 84/1981, *Dermit Barbato* v. *Uruguay*, Communication no. 84/1981, Views adopted on 21 October 1982, para. 9.2.

the storage and handling of firearms were clear and adequate, but were not being enforced. It recommended that the relevant rules and regulations be enforced and that supervisors be held personally responsible for enforcing them. It also recommended that firearms be stored in secure armouries and that it should be an offence for police to carry a firearm while off duty.[6] However, those recommendations do not seem to have been implemented.

27. There seems to be widespread perception among the police that human rights and policing are on opposing sides, instead of an understanding that the function of the police is to protect human rights. That highlights the need for enhanced training of pre-service and in-service police officers on the basic principles of human rights and their role in policing.

28. Police officers receive limited human rights training. The Special Rapporteur was informed that the provisions on human rights in the Constitution are covered in pre-service police training. However, from interviews conducted during his visit, the Special Rapporteur had the impression that human rights was not a substantive part of the training. The Minister of Justice and Attorney General stated in an interview that police training in general was insufficient and that he was advocating a longer training period from the current six months to 18 months. He also recognized the value of refresher courses.

29. The Special Rapporteur was informed that the Papua New Guinea police force would be increased from 5,300 to 8,000 members, which would be a significant and welcome development. However, a mass recruitment of police officers should not be at the detriment of adequate training, including in human rights. In order to ensure that a new police culture is created and that the old one is not merely transferred to the new arrivals, recruits must be targeted for special human rights training and seasoned officers should be required to take refresher courses. In discussions with the Police Commissioner of RPNGC, the Special Rapporteur was assured that a stronger human rights approach would be taken to policing, including in the training of new recruits.

30. There have been some positive initiatives in police training, but they do not seem to have been sustainable. For instance, the Special Rapporteur was informed of an initiative undertaken by NGOs in Simbu in 2009/2010 to provide human rights training to the police, which had had a positive impact for a period of time.

31. Despite the problems in the police force, the senior management of the Constabulary showed an openness to reform. There have also been attempts in the past to reform the police; one example that appears to be widely respected is the review carried out by the RPNGC Administrative Review Committee in 2004. However, the recommendations in the Committee's report remain largely unimplemented. Another positive development is the collaboration between the Constabulary and the Ombudsman Commission and the move to adapt the Memorandum of Agreement signed in 2007 by the Ombudsman Commission and the RPNGC into legislation.

## A. Community Auxiliary Police

32. In some areas of the country, there was an initiative called the Community Auxiliary Police. In terms of the Police Act, 1998, the Auxiliary Police is afforded the same powers as the regular police force. However, since they are volunteers, they do not receive payment for their services unless otherwise prescribed in Regulations (see section 129 (1) of the Act). The exercise of their powers is limited to the geographical area in which they are

[6] Papua New Guinea, Institute of National Affairs, *Report of the Royal Papua New Guinea Constabulary Administrative Review Committee to the Minister for Internal Security Hon. Bire Kimisopa*, September 2004, p. 17.

appointed (see section 127). The Special Rapporteur was informed that the majority of Community Auxiliary Police sections had been closed throughout the country, due to complaints of abuse. Nonetheless, the Community Auxiliary Police in Bougainville, which is supported by New Zealand, is noteworthy. The Auxiliary Police in Bougainville has approximately 337 members, all of whom are paid staff who assist in alleviating the pressure on the regular police force.

### B. Correctional services

33. Section 112 (3) of the Correctional Services Act, 1995, authorizes a correctional officer to use a firearm if he or she "believes it to be necessary to maintain the good order and security of the correctional institution or the custody of a detainee". Furthermore, section 112 (4) provides that a correctional officer shall not be "liable for injury or damage caused by the use of force, instruments of restraint or firearms when acting in accordance with this section." Such provisions allow for scenarios where excessive use of force can be regarded as lawful, as well as the avoidance of accountability.

34. There have been frequent reports in the media about prison breakouts to which the authorities have sometimes responded with deadly violence.

## V. Private security firms and the right to life

35. Private security companies are widespread in Papua New Guinea, and employ more guards than there are police officers in the country. According to the Security Industries Authority, there are approximately 400 licensed security firms in Papua New Guinea, with approximately 20,000 employees.[7]

36. Private security companies are governed by the Security (Protection) Industry Act, 2004, which contains provisions on, inter alia, the granting of licenses and permits in relation to security services. Licensed security officers and security guards may undertake duties relating to crowd control.

37. Although restrictions are placed on the carrying of firearms by employees of private security companies, the Special Rapporteur was informed of cases in which their employees had used excessive force and, in some instances, their conduct resulted in the death of individuals. There have been several complaints that employees of private security companies do not receive appropriate training and that many are often employed because they know someone in the company, regardless of their skills. Members of the police indicated that private security companies did not have manuals or standing orders to guide their conduct, and that they hired anyone. While the Security (Protection) Industry Act contains provisions relating to training and restricting the authority granted to private security companies, the information received from witnesses regarding the conduct of the employees of private companies calls into question the extent to which the Security (Protection) Industry Act is actually implemented, especially insofar as training and holding individuals and companies accountable are concerned.

38. Several stakeholders stressed the need for a regulatory framework for private security companies and some consider their existence to be an indictment of the State and its duty to provide security, claiming that they send the wrong message to the community. One problem with private security companies is that, although they perform the same functions that the State would normally perform, they are not accountable in the same way.

[7] See www.sia.gov.pg/seccomps.html

39. The Special Rapporteur noted that there have been instances in which private security companies arrived at the scenes of domestic violence before the police.

40. Regardless of whether such companies are purely private enterprises, the State has an obligation to ensure the right to life of its citizens, which includes taking measures to ensure that those carrying out policing tasks do so only after receiving appropriate training and that they are held to account when they act outside of the law. In that regard, it is important that existing legislation is enforced, specifically in relation to training. It may also be useful to create a framework which provides greater clarity relating to the accountability of private security companies, including, for instance, the reporting of their activities.

41. Submissions are currently being accepted on the amendments to the Security (Protection) Industry Act, 2004. This is a prime opportunity for stakeholders to make their voices heard and to actively contribute to the formulation of the law.

## VI. Manus Island Regional Processing Centre

42. The Special Rapporteur visited the Regional Processing Centre for asylum seekers on Manus Island — an Australian initiative — to gain a better understanding of the events that took place there from 16 to 18 February 2014, during which riots broke out, leaving one detainee, Reza Barati, dead and approximately 62 others injured. The Special Rapporteur was informed that a second person later died, apparently due to lack of treatment for an infected leg wound. The Special Rapporteur was not allowed to enter the camp itself or speak to any of the detainees, but he was able to discuss the riots with relevant authorities from Papua New Guinea and Australia.

43. Based on that brief and limited visit, the Special Rapporteur established that the detainees were in a possible dead-end situation: there was uncertainty as to their future and whether they would be resettled in Papua New Guinea. On the one hand, the camp authorities indicated that detainees would be resettled in Papua New Guinea if they qualified as refugees; on the other hand, the highest authorities in the country stated that that was a misunderstanding. The uncertainty is fuelled by the fact that the process itself is very slow.

44. Claims that a bullet was lodged in the buttocks of one of the injured raise the issue of why less lethal weapons were not used in what amounted to a foreseeable and foreseen situation of crowd control. It would be important to analyse ballistic evidence in order to evaluate the claims made by the police that only warning shots were fired during the riots.

45. Various investigations have been undertaken, four of which were launched by the Government of Papua New Guinea, the Government of Australia, RPNGC and Justice David Cannings, the latter, at his own initiative under section 57 of the Constitution of Papua New Guinea. The Minister of Foreign Affairs and Immigration, Rimbink Pato, reportedly stated in an interview that the report of the investigation by the Papua New Guinea Government would be released soon and that the police was still in the process of finalizing its investigation. The investigation initiated by Justice Cannings has been halted and an application by the Government of Papua New Guinea, alleging bias on the part of Justice Cannings, is pending before the Supreme Court.

46. On 5 March 2014, the Australian Senate tasked the Legal and Constitutional Affairs References Committee with carrying out an inquiry into the incident at the Manus Island Processing Centre from 16 to 18 February 2014 and requested that it present a report by

26 June 2014. The final report was tabled in December 2014.[8] Reportedly, this inquiry has not received the cooperation of the Papua New Guinea Government and cannot operate extraterritorially.[9]

47. The Special Rapporteur recalls that all investigations should be prompt, impartial, independent and transparent, and in order to ensure credible outcomes, such investigations should receive the cooperation of all involved. Furthermore, in the event that the investigations into the Manus Island incident point to the culpability of specific individuals, they should be prosecuted and a serious effort should be made to improve the situation of asylum seekers on Manus Island.

48. The Special Rapporteur is concerned that there have not been any significant changes since February 2014 to alleviate the situation at the detention centre. While there have been media reports that initial refugee-status determination interviews have been completed in relation to the majority of asylum seekers, no asylum seekers had been resettled in Papua New Guinea as of January 2015. The situation at the Manus Island centre is clearly very unhealthy and volatile, and both States remain responsible for protecting the human rights — including the right to life — of the asylum seekers in the camp.

# VII. Killings by non-State actors

## A. Violence related to sorcery and witchcraft accusations

49. Violence related to accusations of sorcery and witchcraft is a widespread problem in many parts of Papua New Guinea. In some instances, when a person dies (generally of unexplained causes or prematurely), someone is accused of having caused the death by witchcraft and is attacked by community members as "payback".

50. The reality of the terror, pain and suffering and social disruption caused by accusations of sorcery and witchcraft is only fully understood when one is confronted with the family of victims and the survivors who carry the scars of the attacks. The identification of individuals as witches or sorcerers is arbitrary and subjective. According to many people interviewed, the accusation may be motivated by considerations such as jealousy or greed (e.g. wanting the property of the accused person); aimed against those who do not fully fit in (e.g. not showing enough grief when someone dies); or intended to get rid of outsiders, the elderly and the marginalized, often women. It is a vicious practice with no place in today's human rights era.

51. The Special Rapporteur was informed that, on more than one occasion, the police had been reluctant to intervene as they, themselves, were members of the community and might face retributive attacks or were afraid of the alleged sorcery or witchcraft tool. In some cases, police officers stated that they lacked the manpower to intervene against large crowds. Sorcery-related killings are generally carried out by a group of people. In the rare cases where perpetrators have been apprehended, it was often only those involved in the actual killing that were charged, not the instigators of the violence, although the law is flexible enough to prosecute instigators.

52. The law may offer some relief to persons accused of sorcery and witchcraft. The Special Rapporteur learned that the Office of the Public Solicitor had helped four (elderly)

[8] See www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Manus_Island.

[9] Amnesty International, *This is still breaking people* (Australia, May 2014), p. 20.

people to bring civil defamation suits in similar cases. One magistrate stated that she had referred to section 7 of the Summary Offences Act, 1977, which prohibits the use of "threatening, abusive or insulting words", in, for instance, cases where a person has called another a *sanguma* (witch or sorcerer). That would result in a fine and/or compensation. While such cases are exceptions, they do provide a starting point.

53. The repeal of the Sorcery Act, 1971, was a positive development. Section 16 of the Act allowed for sorcery as provocation to be raised as a defence in cases of sorcery-related murder, for example, that the deceased was a sorcerer who provoked the murder, and if that were proven, the accused might be found guilty of a lesser offence.[10]

54. While views differ in the legal profession, a senior judge informed the Special Rapporteur that, nowadays, in most cases of sorcery-related killings, the motive is seen as an aggravating circumstance. That appears to be a sensible approach.

55. The Government has taken other steps to address sorcery-related violence, including in particular the process led by the Department of Justice and Attorney General to develop a multi-sectoral national action plan on sorcery and witchcraft accusation-related violence, through consultation with a wide range of governmental and non-governmental stakeholders. If formally adopted and implemented, the action plan would make an important contribution towards eradicating the violence associated with belief in sorcery and witchcraft.

## B. Killings resulting from tribal fighting

56. Traditionally, tribal violence occurred in the villages. However, today, it has found its way into the cities as well. Fights between members of different tribes occur regularly and may be triggered for a variety of reasons, including sorcery and witchcraft, land and territory-related issues, jealousy and inequality. Payback violence is regularly cited as being linked to tribal disputes.

57. Tribal violence has become increasingly violent over the years as individuals have greater access to firearms.

58. The Inter-group Fighting Act, 1977, prohibits certain conduct related to inter-tribal fighting with a view to eradicating this problem; the mere fact of taking part in inter-tribal fighting is an offence. Section 11 (2) of the Act provides for a punishment of between three and six years imprisonment, where a person has taken part in inter-tribal fighting that has resulted in death. However, that provision does not absolve a person from any other offence that he or she may be guilty of in terms of another law (see section 11 (3). Furthermore, in terms of section 11 (3A), where, after an inquiry, a Court determines that an individual is a principal offender or a leader of the fight that results in death, he or she shall be liable to imprisonment for a term of 20 to 30 years. While in some cases, individuals involved in tribal fighting have been prosecuted, problems often arise in relation to securing witnesses to support the prosecution, as many people fear that they will be subjected to payback if they testify.

59. Tribal disputes are often brought before the village courts, rather than the higher level courts. In Goroka, a Peace Park — a large open space — has been established, where the magistrates of the Village Court, the tribal groups involved, the police and other interested parties meet to mediate problems and reach a settlement. Generally, a cash payment of is offered as compensation to resolve the dispute. However, it may happen that

[10] See Sorcery Act 1971, sects. 7 and 16.

the communities are not satisfied with the financial compensation offered, which could give rise to renewed fighting. In addition, Village Court mediations could foster impunity if the tribal fight involved crimes such as killing or rape and serious physical injury.

### C. Domestic violence

60. Domestic violence and rape are widespread and serious concerns in Papua New Guinea. Although they do not always result in death, the threat thereof remains.

61. The Government has taken some positive steps to address violence against women, including involvement in initiatives to highlight the issues relating to gender-based violence and, notably, the passing of the Family Protection Act in September 2013, which criminalizes domestic violence.

62. The Special Rapporteur considers that much more education about and awareness of domestic violence is needed and that the Family Protection Act must be enforced as a matter of priority. School curricula should include positive values, for example, in life skills courses. In the context of sorcery-related killings, education could take the form of ensuring that proper medical explanations are given to the aggrieved relatives of those who were killed. That could go a long way in curbing accusations that sorcery played a role in the deaths.

63. The Special Rapporteur emphasizes that strengthening the police would help to ensure that perpetrators are held accountable and would reduce recourse to acts of vigilantism.

## VIII. Institutions and procedures for protection and accountability

### A. The police

64. One of the main problems relating to the police is the lack of both human and financial resources. The number of police officers has increased marginally since Independence, whilst the population has tripled. Police officers are housed in substandard accommodations; their salaries are low and they need new uniforms. Addressing those issues could have a positive impact on police behaviour and could contribute to addressing the acceptance of bribes and general corruption within the force.

65. A general culture of accountability for violent crime is essential for the protection of the right to life. On several occasions, the Special Rapporteur was told that the police do not always carry out investigations and when they do, they are not done properly. In some instances, "petrol money" or other payment must be given to the police before they even consider investigating a matter or carrying out an arrest. Some interlocutors stated that the police accepted bribes to overlook a particular matter.

66. There have been allegations of secondary victimization during the investigation phase, whereby witnesses and/or victims have been mistreated by the police. For that reason, witnesses are often reluctant to come forward to testify or provide information. The Special Rapporteur was told that the police obtain confessions through coercion. In some instances, cases have been thrown out for lack of evidence as such confessions are inadmissible. The Special Rapporteur was also informed of a practice called "snake bail", whereby the police may arrest a person for a serious offence, but record it as a lesser offence so that the person is released. Concern was also raised about whether, in practice, the coroner investigated every case of death in custody. The Special Rapporteur emphasizes that the police must carry out investigations properly, ensure that cases are brought to court

and that adequate evidence is presented to ensure proper prosecutions. Failure to do so thwarts accountability and could amount to a violation of the State's obligations under international law.[11]

67. It was reported that police officers maintained allegiance to their tribes or "wantoks", which, in some instances, are valued more than their law enforcement duties. Indeed, conduct such as that of the Commander mentioned in paragraph 25 above, where police resources are used to exact a personal vendetta should not be tolerated, and appropriate action should be taken against such abuse of power.

68. The Police Commissioner mentioned that officers had to give a report every time they discharged a firearm. He acknowledged that, on occasion, police officers violate the law, but claimed that delinquent officers were usually brought to task. That picture is very different from the information received from victims and other stakeholders. The Special Rapporteur was informed of many cases of blatant use of excessive force by the police, for which no action was ever taken to hold the police officers to account.

69. The Special Rapporteur was informed that complaints against the police were dealt with by the Internal Investigation Unit (IIU), which is independent of police stations. However, in practice, complaints must be lodged at a police station, which dissuades victims of police abuse from lodging complaints as they would have to do so to the same body that carried out the abuse. The Special Rapporteur was informed of a case where the victim was too afraid to go to the police to lodge a complaint because he had received threats. A similar internal investigation process also exists for correctional services staff; however, it seems that correctional services officers are rarely, if ever, prosecuted or convicted.

70. In general, an investigation can only be initiated after a person lodges a complaint to the police. However, allegedly the police do not wear identification badges and, in some instances, they do not even wear uniforms, which makes it difficult for a victim of police violence to lodge a complaint since he or she cannot prove that the perpetrator is a police officer. When complaints have been lodged, they have not always been followed up as police officers are often unwilling to investigate or testify against their colleagues. The Special Rapporteur emphasizes that allegations of serious misuse of force by police officers must be properly investigated. While it is important to strengthen the internal investigative system, improving discipline within the police force and improving the command and control structure are equally important

71. In 2007, a Memorandum of Agreement was concluded between the RPNGC and the Ombudsman Commission for the Ombudsman to oversee internal investigations into complaints against police officers.

72. The Special Rapporteur was informed that a process is under way to adapt the Memorandum of Agreement into legislation so as to formalize the relationship between the IIU and the Ombudsman Commission. That would offer an opportunity to strengthen the system, and the authorities should also consider enhancing the independence of the Unit Head, for example, conferring special powers and requiring that the Head report directly to the Police Commissioner.

[11] See Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, paras. 16 and 18.

## B. Witness and victim protection

73. Witnesses are often reluctant to come forward to testify due to intimidation by perpetrators of crimes or by members of the group to which the accused belongs. The intimidation may not be immediate and may be directed at the witness or at someone in his or her group. The system of payback was also raised as a reason why a standard witness protection programme would not be feasible in Papua New Guinea. Indeed, the programme would have to ensure protection for the witness and his or her family members for an extended period of time. It has also been argued that resources are not available to provide the level of protection that witnesses would require. Papua New Guinea does not have a victim protection programme either. While there are bound to be problems with such programmes, the benefits would outweigh the drawbacks and, in the long run, they would save lives and facilitate accountability. A legislative framework for victim and witness protection should be adopted based on the particular needs of the context in Papua New Guinea.

74. The Special Rapporteur was informed of a "rapid response" initiative in Simbu, where NGOs, in collaboration with local State actors help individuals accused of sorcery, as well as their family members, to relocate from their place of residence to another part of the country. While that may appear to be a life-saving solution, such initiatives should be viewed as a last resort measure to be employed only when State protection mechanisms fail. The individuals relocated in such circumstances often face severe challenges, including the lack of basic economic security.

## C. Court proceedings

75. Legal proceedings take a long time, and it can take up to three years for some serious cases to reach the court. There are allegedly over 4,000 arrest warrants currently outstanding, some of which date back to the 1980s.

76. The Special Rapporteur was concerned about the lack of public awareness of human rights and the mechanisms in place to protect them. It is imperative that human rights awareness and education be carried out throughout the country in schools, for law enforcement officers and especially for the public, so that they know what mechanisms are available to them.

77. The Special Rapporteur was informed that it was very difficult to file civil claims against the State as documents have to be served in person within six months on designated State officials[12] whose offices are in Port Moresby, and that some people have abandoned their claims against the State because they were unable to serve documents on government officials. It has been suggested that the State should accept documents served by post; however, some people have stated that claims have been struck down due to incorrect service.[13] Even if the State has, on occasion, not raised objections to service by post, it is merely an unwritten practice and the rule can be prohibitive.

78. With the establishment of the Human Rights Track in 2011, the issue of servicing claims in person might to some extent be circumvented. In terms of section 57 of the Constitution, human rights contained in the Constitution are enforceable through the

[12] See Claims By and Against the State Act, 1996, section 5.

[13] Human Rights Watch, "Making their own rules: Police beatings, rape, and torture of children in Papua New Guinea, September 2005 vol. 17, No. 8 (C), p. 102 www.hrw.org/sites/default/files/reports/png0905.pdf

National and Supreme Courts. The Human Rights Track deals with court cases relating to the rights contained in the Constitution. Rule 6 of the Rules of the Courts elaborate upon section 57 of the Constitution and establish standing before the court in respect of a broad range of actors, including any person or body with an interest in protecting and enforcing human rights and international organizations, such as the United Nations. The Human Rights Track is user-friendly and enables anyone to bring human rights cases to court. However, awareness-raising will be needed for the initiative to reach those who most need it.

## D. National human rights institution

79. National human rights institutions have a promotional as well as a protective function and play an important role in many societies around the world. The notion of establishing a national human right institution in Papua New Guinea has been accepted for some time. Such an institution must comply with the Principles relating to the status of national institutions (the Paris Principles) (General Assembly resolution 48/134, annex) and should have a broad mandate covering abuses by both State and non-State actors. While significant work had been undertaken towards completing the draft Constitutional amendments and the draft Organic Law providing for the establishment of a national human rights institution,[14] it seems that inexplicable delays have occurred. The Special Rapporteur urges the Government to complete those laws as a matter of priority. He underlines that the Government should also give strong consideration to establishing, at the same time, a provincial office of the national human rights institution in at least one province, for example, in Simbu. He is of the opinion that such an office could play an important role in addressing the issue of witchcraft and sorcery-related violence in that province, and would also provide invaluable support to the human rights defenders in that province.

## E. Access to lawyers

80. A limited number of lawyers is available in Papua New Guinea and many people simply cannot afford to pay their fees. The Office of the Public Solicitor provides free legal assistance in respect of civil and criminal matters to those who are unable to afford a private lawyer, and in the case of criminal matters to those facing a sentence of two or more years. The Office also has a dedicated human rights desk. Private lawyers are expensive and very few practice criminal law.

81. Few lawyers are interested in joining the Office of the Public Solicitor due to poor benefits offered, in particular, inadequate housing. The Special Rapporteur believes that improving the benefits would attract solicitors country-wide, which would ease the workload of the existing ones. Civil society should also make efforts to obtain funding to establish an NGO that employs human rights lawyers. The possibility of establishing a pro bono system should also be considered. The Special Rapporteur noted that there was a vast vacuum in that area and had held constructive discussions with the Papua New Guinea Law Society in that regard.

## F. Human rights-focused non-governmental organizations

82. While human rights defenders in Papua New Guinea are doing commendable work in respect of specific human rights issues, there is no well-established NGO that addresses

[14] See A/HRC/WG.6/11/PNG/1, para. 36, and A/HRC/WG.6/11/PNG/2, para. 12.

general human rights matters. Knowing that there is a body that can take up the causes of the people they interact with and which can serve as a watchdog would in part ensure the accountability of the police and others. The same applies to a legal advice centre for people who cannot afford private legal representation. There is a clear need for both in the country.

83. Ideally, the establishment of a local NGO as well as the establishment of an office by an international human rights organization would cover both legal and human rights issues. In that regard, the University of Papua New Guinea can play a role on both fronts — by creating a legal clinic and establishing a centre for human rights.

### G. University of Papua New Guinea

84. Experience worldwide has shown that universities are invaluable resources for societies seeking to move forward their human rights agenda. Universities educate young people to staff the system; keep in touch with international developments; carry out research; advise role players, including the Government; inform the public; and in some instances, assist with reporting to treaty and other international bodies. It would be a significant development if the University of Papua New Guinea were to develop its human rights capacity, by having on staff a lecturer dedicated to the topic, including human rights in the curriculum, and establishing a centre for human rights. The University should also ensure that its students participate in international human rights events, such as international moot courts. The School of Law should take a pro-active approach in that regard and consider creating a legal clinic.

### H. United Nations

85. OHCHR currently has two professional staff in Papua New Guinea. It would be of great value to the region if a fully-fledged OHCHR country office were to be set up in the country. Such a team would be a valuable partner for many local human rights initiatives, including the establishment of a national human rights institution.

86. Upon meeting with officials of the Department of Foreign Affairs, the Special Rapporteur mentioned the difficulties he had encountered to correspond with the authorities in Papua New Guinea while he was preparing for his visit. At present, Papua New Guinea does not have a permanent mission in Geneva, therefore urgent appeals and allegation letters are communicated through the Permanent Mission to the United Nations in New York.

## IX. Death penalty

87. During his visit, the Special Rapporteur was informed of the legislative amendments made to the Criminal Code in September 2013 concerning the death penalty. The death penalty may now be imposed as a sentence for two new crimes, namely, "wilful murder of a person on account of accusation of sorcery" and "aggravated rape", and the sentence for "aggravated robbery" has been amended from life imprisonment to the death penalty.[15]

88. There have been various reports about the Government's intention to start implementing capital punishment in response to the high level of violence in the country. While the Special Rapporteur acknowledges the magnitude of the challenge that the

[15] Criminal Code (Amendment) Act, 2013, certified on 18 September 2013.

Government faces in addressing the high level of killings and violence in the country, he does not consider the death penalty to be the answer to the situation. Inter alia, implementing capital punishment would provide a false sense of security and divert attention away from effective long-term solutions such as better policing, economic development, robust correctional institutions and education.

89. Currently, 13 people are on death row in Papua New Guinea, all convicted of wilful murder. However, Papua New Guinea has long been considered a de facto abolitionist State with regard to the imposition of the death penalty. The last execution in the country occurred in 1954, 21 years prior to Independence.

90. The Special Rapporteur strongly encourages the Government to maintain its international positioning as an abolitionist State and refrain from implementing the death penalty. There is a distinct and sustained global trend away from the death penalty as its numerous weaknesses are now widely recognized. The reintroduction of the death penalty by some outlier States are distinct exceptions which have attracted wide criticism. Indeed, after many centuries of experimentation, humanity as a whole has lost faith in State-inflicted death as a form of punishment, inter alia, because it is no longer accepted that it has distinct deterrent powers. The death penalty creates a false sense of security. Papua New Guinea would be moving in the wrong direction by reinstituting the death penalty — both in relation to the global trend and its own Supreme Court's restrictive interpretation of when the death penalty may be considered as appropriate punishment — and is likely to damage its quest to curb violence by doing so.

91. The Special Rapporteur is concerned that implementing the death penalty at the present time could lead to numerous violations of international standards. In that regard, international law requires that the death penalty may be imposed only in the context of the stringent functioning of the law and order system, in order to ensure the highest respect of due process and fair trial guarantees for the defendants, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights.[16] During his visit, the Special Rapporteur was informed of shortcomings in that area, such as extraction of confessions under duress, ill-treatment of persons in custody, lengthy proceedings, or high levels of corruption among various authorities.

92. The right to appeal is a crucial safeguard that must be applied to all persons facing the death penalty. According to information received, at least one of the 13 individuals currently on death row received the death sentence on appeal before the Supreme Court. The Special Rapporteur was informed that the decisions of the Supreme Court cannot be appealed. If that is the case, the execution of persons sentenced to death at the level of the Supreme Court would be a violation of international law if their right to appeal their sentence is not ensured.

93. International law also states that the death penalty may be imposed only for the most serious crimes, which is interpreted as being the crime of intentional killing. The amended Criminal Code provides for the death penalty for the offences of aggravated robbery, aggravated rape and piracy or treason, which do not constitute most serious crimes.

94. The legal framework regarding the death penalty in Papua New Guinea also lacks provisions that would prohibit the imposition of the death penalty on juvenile offenders.[17]

[16] See Safeguards guaranteeing protection of the rights of those facing the death penalty, approved by Economic and Social Council resolution 1984/50.

[17] The SR was informed that the Juvenile Justice Act has been passed in Parliament. The final version of the text is not yet available, however, it is alleged that an earlier version prohibited imposition of the death penalty on juveniles.

new mothers and persons with psycho-social disabilities, which opens the way for another violation of international standards, should the death penalty be imposed on such persons.

95. Furthermore, the current text of the Criminal Code (Amendment) Act, 2013, providing for the death penalty in cases of wilful murder, killings related to sorcery accusations and aggravated rape may be interpreted as imposing capital punishment in a mandatory way.[18] The mandatory imposition of the death penalty is contrary to international standards and appears to be contrary to the interpretation of the Supreme Court which, in the case of *Steven Loke Ume* v. *The State* (2006) SC 836, assessed whether the law provided for mandatory death sentences and found that:

> "...the law as it stands today is quite clear — that the imposition of the death penalty since 1965 has always remained discretionary. The death penalty is the maximum penalty for wilful murder (or for that matter, the three (3) other crimes which carry the death penalty) and therefore discretionary" (para. 39).

96. The Special Rapporteur remains unconvinced of the deterrent effect of the death penalty. In addition to studies at the international level which prove that the death penalty is not necessarily an effective deterrent of crime, several interlocutors shared the opinion that the death penalty might actually lead to further killings in Papua New Guinea, given the payback culture. While the Special Rapporteur condemns the existence of the payback culture, he acknowledges that payback-related killings might increase if the death penalty is carried out. Some members of the judiciary and prosecutors indicated that they would have to give very careful consideration to the reimposition of the death penalty, due to fear of lethal reprisal against them and their families.

97. At the time of writing this report, the Special Rapporteur learned that the Government plans to rethink the death penalty. The Prime Minister had stated, "We certainly do not want to be seen as a country that is actively promoting the death penalty as a means of enforcing law and order in the country. We are actively debating the death-penalty issue ... and there may be some need for review."[19] Insofar as that represents a new approach, the Special Rapporteur welcomes that statement.

## X. Role of extractive industries

98. Space does not permit a full discussion of this topic, but it is important to raise the issue. Extractive industries are an important component of the economic development of Papua New Guinea, but they pose significant risks to the protection of life. In the extreme case, the history of Bougainville is a telling reminder of the dangers associated with the exploitation of natural resources, where the underlying legal and normative framework has not yet been settled. Concern that the necessary framework to meet the expected economic growth is not in place in the country as a whole is in fact the broader point of this report.

99. The stakes are high, as are the risks that government forces or private security firms will become entangled in the protection of the underlying interests through the use of force. That underscores the need for discipline and control in those sectors.

[18] See Criminal Code Act 1974, sect. 19.

[19] See http://www.wsj.com/articles/papua-new-guinea-may-review-death-penalty-prime-minister-says-1425954144.

## XI. Killings during the Bougainville crisis

100. An important element of the Special Rapporteur's visit was to examine the progress made in the peacebuilding and redress processes in the Autonomous Region of Bougainville following the conflict that erupted in 1989 and lasted 10 years. The conflict took an unaccounted for number of lives and resulting in a yet unknown number of mass graves.

101. A former Special Rapporteur on extrajudicial, summary or arbitrary executions visited the region in 1995. In his report[20] to the Human Rights Commission in 1996, he presented a comprehensive overview of the conflict and the violations of the right to life, as well as made recommendations relating to the killings that occurred during the crisis. In relation to the peace and reconciliation process, he recommended that education, training and the administration of justice be enhanced. The current Special Rapporteur's visit was therefore an opportunity to examine the follow-up to those recommendations.

102. Important developments have taken place since 1995 in relation to building peace in the Region. The Bougainville Peace Agreement was signed in 2001, which paved the way for elections in 2005 for the establishment of the Autonomous Bougainville Government. Among the most recent initiatives, are 2011 Konnou Peace Agreement between factions, the Bougainville Peace and Security Framework and its Implementation Strategy, in 2012, and the eligibility of Papua New Guinea and Bougainville as a beneficiary of the United Nations Peacebuilding Fund, in 2013.

103. Nonetheless, a considerable number of grievances still persist and the application of various transitional justice measures may be necessary. In that regard, the Special Rapporteur was informed, in particular, of the need of the families of the many disappeared persons to locate the graves of their relatives and to ensure proper burial.

## XII. Conclusions

104. **All the issues raised in this report present formidable challenges. However, the Special Rapporteur remains convinced that the prospects of investment of time, effort and resources to advance human rights having a positive impact on the society as a whole are probably greater in Papua New Guinea than in countries in comparable situations. Papua New Guinea has the opportunity to set a vibrant and burgeoning society on a solid human rights foundation. The Special Rapporteur urges the Government of Papua New Guinea to adopt a visionary approach in that regard and calls on the international community to support the Government of Papua New Guinea in achieving that objective.**

105. **It is clear that a number of steps needs to be taken to move the human rights and, in particular, the right to life agenda forward. It is important that the Government of Papua New Guinea take cognizance of how the interplay between different components can benefit society, for instance, the establishment of a national human rights institution can help to introduce human rights in school curricula and police training; a human rights centre within the University and the establishment of a human rights-focused NGO would contribute to strengthening protection of human rights; a witness and victim protection programme would help to make the criminal justice system more efficient; a larger and better trained police force could strengthen the certainty of conviction for criminal offences, which, in turn, would contribute to**

[20] See E/CN.4/1996/4/Add.2.

countering calls for the reinstatement of the death penalty. All of the aforementioned proposals are interlinked; therefore, it is important that the challenges facing Papua New Guinea are approached holistically and not viewed in isolation from each other.

# XIII. Recommendations

## A. To the Government of Papua New Guinea

106. In collaboration with other stakeholders, a focused, realistic human rights strategy should be developed.

107. The adoption and implementation of the National action plan on sorcery and witchcraft accusation-related violence should be fully supported by an holistic approach that draws on various sectors. A national awareness-raising and education campaign, involving high-level representatives of the Government, churches, the education system, as well as prosecutors and public solicitors, members of the village courts and the media should be embarked upon.

108. As a matter of priority, a national human rights institution should be established and serious consideration should, at the same time, be given to establishing a provincial office of the human rights institution, for example, in Simbu Province.

109. Human rights and, in particular, the right to life should be included in school curricula and the necessary steps should be taken to ensure that school curricula include education on the unacceptability of all forms of interpersonal violence, in particular, in the context of accusations of sorcery and witchcraft, tribal affiliations and domestic violence.

110. A adult education programme to promote and raise awareness about human rights and mechanisms, including the Human Rights Track of the National Court, should be established.

111. Better and regular institutionalized training on human rights for police and correctional services officers, including refresher courses, should be ensured and police officers should be trained on the use of firearms.

112. Increased resources should be made available to the police so as to strengthen its capacity in terms of both numbers and quality of duty performed.

113. A proper legal framework for the use of force by and accountability of private security firms should be established.

114. Measures for stricter gun control should be strengthened.

115. Witness and victim protection schemes should be established.

116. The effective and independent functioning of the Internal Investigations Unit within the Constabulary and the Ombudsman Commission should be strengthened.

117. The de facto abolitionist approach to the death penalty should be maintained with a view to abolishing it de jure.

118. Engagement with United Nations human rights bodies should be continued and strengthened, in particular through:

(a) The ratification of the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;

**(b) Regular and timely reporting to the human rights treaty bodies;**

**(c) Continued engagement with the special procedures of the Human Rights Council, in particular through the facilitation of official visits by mandate holders and implementation of their recommendations;**

**(d) The setting up of a mechanism to respond in a regular and timely manner to communications from the special procedures mechanisms concerning alleged human rights violations In that regard, it may be expedient to reconsider the standard protocol and, for example, request OHCHR to send the communications to both the Permanent Mission to the United Nations in New York and the Ministry of Foreign Affairs and Immigration in Port Moresby directly.**

119. **Together with the Government of Australia and as a matter of priority, the position of the asylum seekers at the Manus Island detention centre should be clarified, and investigations into the February 2014 riots should be independent and transparent.**

## B. To the United Nations

120. **OHCHR should strengthen its presence in the country by establishing a country office in Papua New Guinea, and provide it with adequate resources to carry out the mandate of human rights monitoring and technical assistance.**

## C. To civil society and other actors

121. **The Papua New Guinea Law Society should consider ways to involve its members in the human rights arena, including by providing legal services on a pro bono basis.**

122. **At least one local NGO focused on human rights should be established and international human rights NGOs should consider setting up an office in Papua New Guinea.**

123. **A legal clinic aimed at providing legal aid to those who cannot afford private counsel should be established.**

124. **The University of Papua New Guinea should consider the development of its human rights capacity as a top priority.**

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**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

# Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns

**Addendum**

## Mission to the Gambia*

*Summary*

The Special Rapporteur on extrajudicial, summary or arbitrary executions conducted an official visit to the Gambia from 3 to 7 November 2014. The report presents his main findings, including with regard to the imposition of the death penalty, the resumption of executions, the use of force by law enforcement agencies, impunity for extrajudicial executions, the use of force during demonstrations, lack of accountability for human rights violations, groups at risk and fear of reprisals. It proposes recommendations to the Government, the international community and civil society to prevent unlawful killings and ensure better protection of the right to life.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission only.

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## Annex

*[English only]*

# Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, on his mission to the Gambia (3–7 November 2014)

Contents


| | | *Paragraphs* | *Page* |
|---|---|---|---|
| I. | Introduction | 1–5 | 3 |
| II. | General background | 6–10 | 4 |
| III. | Legal framework | 11–13 | 5 |
| IV. | Cooperation with international and regional organizations | 14–17 | 6 |
| V. | Main challenges encountered | 18–81 | 7 |
| | A. Death penalty | 18–24 | 7 |
| | B. Resumption of executions and conditional moratorium | 25–34 | 8 |
| | C. Use of force by law enforcement agencies and activities of paramilitary groups | 35–51 | 10 |
| | D. Impunity for extrajudicial executions and enforced disappearances | 52–64 | 14 |
| | E. Public demonstrations and the use of force | 65–68 | 15 |
| | F. Accountability for human rights violations | 69–76 | 16 |
| | G. Groups at risk | 77–79 | 18 |
| | H. Fear of reprisals | 80–81 | 19 |
| VI. | Concluding remarks | 82–84 | 19 |
| VII. | Recommendations | 85–118 | 19 |

# I. Introduction

1. At the invitation of the Government of the Gambia, the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, conducted a joint official visit to the country with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez.[1]. The visit took place from 3 to 7 November 2014. It was originally scheduled for August 2014, but was postponed by the Government at the last minute for reasons still unknown. The Special Rapporteur on extrajudicial, summary or arbitrary executions thanks the Government of the Gambia for extending the invitation to visit the country, as well as all officials with whom he met. Additionally, he wishes to thank the United Nations country team and, in particular, the Resident Coordinator, for their logistical support. The Special Rapporteur is also especially grateful to the staff of the Office of the United Nations High Commissioner for Human Rights (OHCHR) West Africa Regional Office for their invaluable support in preparing for and carrying out the visit.

2. During the visit, the Special Rapporteur met with the Vice-President of the Gambia, the Minister of Foreign Affairs, the Minister of Interior, the Minister of Justice, officials of the Office of the Attorney General, the Office of the Solicitor General and the Office of the Director of Public Prosecutions, the Director General of the National Intelligence Agency, the Director General of the National Drug Enforcement Agency, the Director General of Prisons, the Inspector General of Police, the Chief Justice of the Supreme Court and High Court Justices, the Prison Visiting Committee and the Office of the Ombudsman. Additional meetings were held with the United Nations country team, the diplomatic community and civil society. In preparation for the visit, the Special Rapporteur met in Senegal with staff of the OHCHR West Africa Regional Office, and with representatives of the international community and of the Gambian community in exile. The Special Rapporteur on extrajudicial, summary or arbitrary executions expresses regret that the President of the Gambia was not available for a meeting with the two Special Rapporteurs during their stay in Banjul.

3. As is the case for all country missions, the Special Rapporteurs had requested authorization, in advance, in accordance with the terms of reference for fact-finding missions by Special Rapporteurs, which apply to all country visits in all parts of the world and which, among other things, include guarantees concerning "access to all prisons, detention centres and places of interrogation", "confidential and unsupervised contact with witnesses and other private persons, including persons deprived of their liberty", and protection from reprisals.[2] Such authorization was granted by the Government in a letter dated 27 October 2014 and was reiterated in a meeting with the Government at the outset of the visit.

4. Notwithstanding, when they commenced their visits to prisons, the Government denied the Special Rapporteurs in-situ access to the security wing in Mile 2 Prison and insisted on having prison personnel accompany them during the inspection. The Vice-President and other Government representatives, in a meeting held with the Special Rapporteurs where the latter protested against this exclusion, made it clear that they did not have the power to rule otherwise, and that the Special Rapporteurs would not be allowed into the security sections of the prisons in the country. This breach of the terms of reference

[1] The Special Rapporteur on the question of torture presented his report (A/HRC/28/68/Add.4) to the Human Rights Council at its twenty-eighth session.

[2] E/CN.4/1998/45, appendix V.

forced the Special Rapporteurs to suspend visits to prisons altogether. The notion of departing from the principle of unrestricted access in one country but not in others would have displayed double standards, created a dangerous precedent for the future and undermined the mandate entrusted to the Special Rapporteurs by the Human Rights Council. At the same time, it was too late to abandon the visit altogether. Although it was concluded, the visit cannot be viewed as full-fledged. The Special Rapporteur notes that, owing to the Government's refusal to allow unrestricted access to detention centres, an inference must be drawn that there is something there to hide.

5. The present report focuses on the situation as it was during the visit, although some references are made to subsequent developments, including the attempted coup d'état of 30 December 2014 and its reverberations. The report was sent to the Government for comments on 19 March 2015 and was completed on 5 May 2015.

## II. General background

6. In 1994, a military coup installed Yahya Jammeh as President. A nominal return to civilian rule took place two years later, when a new constitution was established and presidential elections were held. Mr. Jammeh has been re-elected in all subsequent elections[3] and has since kept a strong grip on public and private affairs in the country. The Special Rapporteur perceived a high degree of personalization of State practice and of decision-making power in the figure of the President.

7. The Cabinet is appointed by the Head of State and appears to undergo continuous shuffling. Legislative power is vested in the unicameral National Assembly; opposition groups are insufficiently represented to be able to exert influence on the Assembly's decisions. The judicial system includes the Supreme Court, the Court of Appeal, the High Court, the Special Criminal Court and several lower courts. Judges are appointed by the President after consultation with the Judicial Service Commission and are granted life tenure. In practice, however, judges have frequently been removed without explanation, and their appointments have been heavily criticized for lack of independence and transparency.[4]

8. Economic development remains a challenge in the Gambia, with high poverty and unemployment rates and heavy reliance on foreign aid. The European Union is the country's biggest development assistance partner. However in December 2014, it cut off €13 million of funding, and threatened to block another €150 million in response to the country's poor human rights record.[5] In turn, the Gambia has recently turned to donor countries in the Gulf.

9. On 30 December 2014, military and ex-military officers in the Gambia attempted to stage a coup d'état, but were repelled by forces loyal to the President. Three alleged plotters were killed during the attacks and one was injured and captured. Up to 30 persons, including family members of insurgents, have been arrested and been held in incommunicado detention, with some being subjected to torture. Only 10 were reportedly released. The President proceeded to replace key members of the Cabinet following these events, including the Minister of Justice and the Minister of Foreign Affairs. At a court martial held on 30 March 2015, three persons were sentenced to death and three to life imprisonment for their alleged involvement in the failed coup.

[3] In 2011, ECOWAS stated that the environment was unconducive to the conduct of free and fair elections. See http://news.ecowas.int/presseshow.php?nb=234&lang=en&annee=2011.

[4] International Bar Association, "Under pressure: a report on the rule of law in Gambia" (August 2006).

### Human rights overview

10. The country is characterized by disregard for the rule of law, infringements of civil liberties and the existence of a repressive State apparatus. State institutions are weak and under the influence and control of the executive power, namely the President. Transparency and accountability in public affairs are scarce and there are no independent institutions or processes to channel alternative voices or social demands. The activities of civil society organizations are closely monitored by the executive. The Special Rapporteur encountered many manifestations of fear and frustration in civil society, with reports of rampant State-led violence, persecution of the media and critical voices, and impunity for human rights violations. Human rights concerns also include interference with the independence of the judiciary, denial of due process, prolonged pretrial and incommunicado detention, poor prison conditions, persecution of lesbian, gay, bisexual and transgender (LGBT) persons, and tolerance of the practice of female genital mutilation. It appears that, at best, the State, for strategic reasons, occasionally pays lip service to human rights, but otherwise pursues the narrow interests of power and political survival. Human rights protection is largely an illusion.

## III. Legal framework

11. The Constitution of the Gambia, approved by referendum, entered into force on 16 January 1997. Chapter IV of the Constitution provides for the protection of fundamental rights and freedoms. The right to life is established therein as a fundamental human right from which no derogation is permitted, even at a time of public emergency that threatens the life of the nation.[6] Despite these constitutional guarantees, compliance is deficient and many fundamental rights are routinely violated.

12. Moreover, in recent years, the Government has adopted legislation that infringes international human rights standards, such as (a) the Indemnity Act of 2001, which gives the President the power to indemnify law enforcement officials for abuse of force during situations of public emergency, unlawful assembly, public disturbance or rioting; (b) the Information and Communication Act of 2013, which creates several new offences and imposes harsher penalties for online activity deemed critical of the Government; (c) a series of amendments to the Criminal Code, which broaden definitions and impose harsher penalties for various offences, such as sedition, libel, public disorder, or giving false information; and (d) the Criminal Code (Amendment) Acts of 2005 and of 2014, sections 144 and 147, on "carnal knowledge of any person against the order of nature… and any other homosexual act" and on "aggravated homosexuality", which criminalize sexual activities between consenting adults.

13. The legal system of the Gambia requires the domestication of international treaties before they can be enforced by national courts. At the international and regional level, the Gambia has ratified several human rights treaties, including the International Covenant on Civil and Political Rights and its First Optional Protocol, and the African Charter on Human and Peoples' Rights. However, the country is yet to ratify a number of international human rights instruments, including the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the

[6] A/HRC/WG.6/7/GMB/1, p. 3.

Protection of All Persons from Enforced Disappearance, the Convention on the Rights of Persons with Disabilities, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. According to information provided by the United Nations country team, the Government has indicated that some of those treaties, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of Persons with Disabilities have been ratified by the National Assembly but the instruments have not been deposited with the Secretary-General of the United Nations.[7] When asked about such ratifications, the Special Rapporteur encountered confusing answers from State authorities, who seemed to be unaware of or insufficiently informed about the process and the current status of ratifications. Along with inadequate information management processes, Cabinet shuffles are arguably responsible for this, as the heads of key ministries such as justice and foreign affairs have changed continuously in recent years, resulting in a lack of institutional memory. The Special Rapporteur would like to take this opportunity to repeat the question to the Government: have these treaties been ratified?

## IV. Cooperation with international and regional organizations

14. The country's cooperation with the United Nations human rights machinery has been limited. This was the first-ever visit to the country by a special procedures mandate holder of the Human Rights Council. Of the 14 communications sent by special procedures mandate holders since 2007, none has received a substantive response from the Government. The Gambia has submitted overdue reports to some treaty bodies and has failed to submit reports to others. The country has been reviewed twice under the universal periodic review, in 2010 and 2014. The Government has failed to implement many of the recommendations of the first review, and rejected 78 of the 171 recommendations of the second review, including on the maintenance of the moratorium on executions and the abolition of the death penalty, and on cooperation with special procedures.[8]

15. At the regional level, the Gambia has accepted the jurisdiction of the Economic Community of West African States (ECOWAS) Community Court of Justice but has not accepted the competence of the African Court on Human and Peoples' Rights. The ECOWAS Community Court of Justice has ruled three times against the Government of the Gambia. The Government has failed to implement those decisions, as well as a series of resolutions issued by the African Commission on Human and Peoples' Rights.

16. The headquarters of the African Commission on Human and Peoples' Rights are, for historical reasons, based in the Gambia. The Commission has an important role to play in the protection of human rights in general, and the right to life in particular. To what extent the location of the Commission in the Gambia is conducive to that goal is uncertain. In 2009, the Commission understandably called on the African Union to consider relocating

[7] See A/HRC/WG.6/20/GMB/2, p. 3. At the 2014 universal periodic review, the Gambian delegation stated that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol had been accepted by the National Assembly and were in the process of ratification; see A/HRC/28/6, para. 92.

[8] The Gambia also rejected recommendations concerning the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the non-criminalization of sexual orientation or gender identity, and the removal of restrictions on freedom of expression.

its secretariat, following a highly inappropriate public statement by Mr. Jammeh threatening to kill human rights defenders and their supporters.[9]

17. In general, it can be said that the Gambia shows little regard for the international bodies to which it belongs — whether those are United Nations or African structures.

## V. Main challenges encountered

### A. Death penalty

18. The death penalty was abolished in the Gambia in 1993 but was reinstated by the administration of Mr. Jammeh in 1995, which argued that since its abolition there had been a steady increase in homicides and treasonable offences.[10] The 1997 Constitution mandates the National Assembly to review the desirability of the death penalty 10 years after its entry into force, with a view to its possible total abolition.[11] The review should have taken place in 2007 and is now eight years overdue; this appears to have been a hollow promise.

19. According to article 18 (2) of the 1997 Constitution, "no court in the Gambia shall be competent to impose a sentence of death for any offence unless the sentence is prescribed by law and the offence involves violence, or the administration of any toxic substance, resulting in the death of another person". On face value, this appears to be in line with the international standard relating to the "most serious crimes", according to which the scope of the crimes punishable by death should not go beyond intentional crimes with lethal or other extremely grave consequences.[12] The reality, however, is different.

20. A review of Gambian law shows that the Criminal Code,[13] the Gambia Armed Forces Act[14] and the Anti-Terrorism Act[15] set out a number of offences that are punishable by death, including treason, murder, aiding the enemy, offences by persons in command when in action, offences relating to security, offences relating to prisoners of war, offences relating to convoys, mutiny with violence, and acts of terrorism. These offences do not intrinsically entail the killing of another person, much less an intentional killing.

21. The Special Rapporteur expressed publicly his concern[16] that in October 2012 the Supreme Court had upheld the death penalty for treason in the constitutional challenge brought by Lieutenant General Lang Tombong Tamba and his co-defendants; it had argued that article 18 (2) envisaged the death penalty for all crimes involving "violence", understood to include attempted violence or violence that did not result in death.[17] The problems of this interpretation under international human rights norms are clear (see para. 19 above), but a plain reading of article 18 (2) also shows that it requires violence or

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[9] See http://www.achpr.org/press/2009/10/d71/. On 29 September 2009, the Special Rapporteur sent a joint urgent appeal concerning the speech, but did not receive a response from the Government. See also A/HRC/14/24/Add.1.

[10] See A/HRC/WG.6/7/GMB/1, p. 3.

[11] Article 18 (3).

[12] Article 6 (2) of the International Covenant on Civil and Political Rights and article 1 of the safeguards guaranteeing protection of the rights of those facing the death penalty.

[13] Sections 35 and 188.

[14] Sections 36–39, 41 and 45.

[15] Section 3 (1).

[16] See http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15265&LangID=E.

[17] *Badjie* v. *State* (2012), Supreme Court criminal appeal 1-7/2011 (Gambia). See: Andrew Novak, "The rule of law, constitutional reform, and the death penalty in the Gambia", *Richmond Journal of Global Law and Business*, vol. 12, No. 2, p. 219.

the administration of a substance "resulting in the death of another person", not merely with the potential of resulting in the death of another person. The Special Rapporteur is pleased to learn that, on 12 November 2014, the Supreme Court unanimously agreed and commuted the death sentences of Lang Tombong Tamba and his co-defendants to life imprisonment.[18]

22. Following the attempted coup of December 2014, seven people stood trial at a court martial on charges of treason, conspiracy, mutiny and assisting the enemy.[19] Three persons were sentenced to death (Lieutenant Colonel Sarjo Jarju, Private Modou Njie and Lieutenant Buba Sanneh) and three were sentenced to life imprisonment (Captain Buba Bojang, Lieutenant Amadou Sowe and Captain Amadou Jobe). Notwithstanding legal requirements for court martial hearings to be public, control was reportedly tight and access to the media was banned, giving rise to concerns about the fairness of the trial.[20] The Government did not ensure the presence of independent observers, despite a United Nations request in that regard. The accused were reportedly represented at the trial by lawyers sent by the National Agency for Legal Aid. Fear has been expressed that the persons sentenced to death could be executed at short notice, even if they have the right to appeal. The Special Rapporteur recalls that the imposition of the death penalty for crimes that are not intentional and do not result in death, or following trials that do not meet the most stringent guarantees of due process, are incompatible with international standards and may constitute an arbitrary execution. Reports also indicate that the accused were detained incommunicado and were subjected to torture while in custody.

23. Furthermore, the Special Rapporteur is concerned that, under the Criminal Procedure Code of the Gambia, the death penalty is mandatory for murder (the Government requested that it be noted that it is discretionary under the Gambian Armed Forces Act). A mandatory death penalty, for any offence, is a violation of international human rights law standards, as it prevents judges from considering extenuating circumstances or choosing the imposition of more lenient punishments in individual cases.[21] The mandatory death penalty for drug trafficking was abolished in 2011.

24. The Special Rapporteur received reports about the inadequate conditions of detention of death row prisoners, who are held in the security wing of Mile 2 Prison in solitary confinement, and in small, dark and poorly ventilated cells. In addition, numerous reports, including from former inmates interviewed by the Special Rapporteur, indicate that they are denied visits from their legal representatives and relatives (an allegation that the Government denies), are not allowed to receive food from them and are only allowed 10 minutes of exercise per day.[22]

## B. Resumption of executions and conditional moratorium

25. After 27 years of no executions, Mr. Jammeh announced in August 2012 that all existing death sentences would be carried out. On 23 August 2012, nine death row prisoners held at Mile 2 Prison were executed, allegedly by a firing squad. At the time of the executions, there were 47 inmates on death row. According to the available evidence, the death sentences were imposed in violation of major international fair trial standards, including the "most serious crimes" provisions. The following week the executions were

[18] See https://www.amnesty.org/en/countries/africa/gambia/report-gambia/.

[19] See https://www.amnesty.org/en/articles/news/2015/04/gambia-soldiers-sentenced-to-death-in-secret-trial-must-not-be-executed/.

[20] Ibid.

[21] See A/67/275, p. 13.

[22] For further details on conditions of detention, see A/HRC/28/68/Add.4

halted, and the remaining prisoners on death row were spared. The only difference between those who lived and those who died seems to be pure luck. The killings were, in other words, arbitrary and thus unlawful.

26. This callous treatment of human life shocked the international community and was met with global condemnation, including by the United Nations High Commissioner for Human Rights,[23] the African Commission on Human and Peoples' Rights[24] and the European Union.[25] The Special Rapporteur sent an urgent appeal to the Government and expressed publicly his outrage over the resumption of executions, but did not receive a substantive response from the Government.[26]

27. Reports that were brought to the attention of the Special Rapporteur indicate that Malang Sonko, Tabara Samba, Buba Yarboe, Gebe Bah, Lamin Jarju, Alieu Bah and Lamin Jammeh were executed without exhaustion of their legal appeals. Another person who was executed, Dawda Bojang, had been sentenced to life imprisonment in 2007 but had had his sentence altered to capital punishment in 2010 after he appealed to the High Court. At the time of the execution, he had not exhausted his appeal to the Supreme Court. The death sentence of another prisoner, Lamin Darboe, had been commuted to life imprisonment in 1991 and was then reinstated by the Armed Forces Provisional Council in 1995 when Gambia restored the death penalty, in violation of the principles of non-retroactivity of the law and the right to benefit from a lighter penalty.[27] He had not exhausted his legal appeals.

28. The Government denies that the nine prisoners were executed pending exhaustion of their appeals. According to information from other sources, none of the cases were brought to the Supreme Court before the executions were carried out, and some did not reach the Court of Appeal. As the Constitution provides that appeals in death penalty cases are automatic,[28] the onus was on the authorities to ensure that appeals reached a higher tribunal. If the information obtained is correct, these incidents are in violation of national[29] and international norms prescribing that procedural guarantees must be observed before the death penalty can be imposed, including the right to review by a higher tribunal. The Government could easily prove their version by making records of the court proceedings available. So far they have elected not to do so. The Government is again requested to provide the records.

29. Reports further indicate that the trials did not meet other due process safeguards, such as the right to consular assistance. Two Senegalese prisoners — Tabara Samba and Gebe Bah — were among those executed, however the Senegalese authorities were not informed prior to the executions.

30. The Special Rapporteur was also informed that one of those executed, Mr. Yarboe, may have had a mental disability, an allegation denied by the Government. International law provisions prohibit the imposition or execution of the death penalty on a person who has any form of intellectual or psychosocial disability.[30]

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[23] http://www.un.org/apps/news/story.asp?NewsID=42772&Cr=Human+Rights&Cr1=#.UG25yE3AeE3.

[24] See http://www.achpr.org/press/2012/08/d127/.

[25] See http://eu-un.europa.eu/articles/en/article_12527_en.htm.

[26] See A/HRC/22/67. For the press statement, see http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12461&LangID=E.

[27] Safeguards, article 2.

[28] Section 128 (1) of the Constitution provides for an automatic appeal.

[29] See A/HRC/14/6.

[30] Safeguards, article 3.

31. Furthermore, the Special Rapporteur expresses concern that the executions were carried out in secrecy and without prior notification being provided to the prisoners, their families or their lawyers. According to reports, the Gambian authorities only confirmed the executions several days after they had taken place. This practice runs counter to the general obligation of States not to practise the death penalty in secrecy.[31]

32. In addition, the bodies of those executed were not returned to their families and they were not informed of the place of burial.

33. The Prison Visiting Committee, comprised mainly of serving or former government officials, reportedly visited Mile 2 Prison only three months after the executions.

34. In September 2012, a renewed conditional moratorium was put in place, dependent on the rise or fall of the crime rate in the country. The moratorium is obviously to be welcomed, but the precondition is problematic — the question of whether those on death row will live or die is made contingent upon external developments that are far outside their control.[32]

## C. Use of force by law enforcement agencies and activities of paramilitary groups

35. A repressive State apparatus in the hands of the security forces appears to reign in the Gambia. There is widespread fear in civil society about the unchecked use of force by law enforcement agencies. The security forces, over which the President retains a strong grip, actively repress any sign of discontent, terrorizing civil society and instilling a climate of fear and mistrust via routine arrests, enforced disappearances and extrajudicial executions carried out against anyone considered to be critical of or threatening to the regime. The security forces are also widely perceived to be corrupt and inefficient.[33]

36. The Constitution of the Gambia does not require the existence of an imminent threat of death or serious injury for the use of lethal force, nor does it require that it only be used when it is strictly unavoidable in order to protect life, as prescribed by international law. Conversely, under article 18 (4) of the Constitution, the use of such force is allowed when "reasonably justifiable" for the defence of property, "to effect lawful arrest or prevent the escape of a lawfully detained person", "to prevent criminal offences", or in cases of "riots, insurrection or mutiny". Under this provision, deprivation of life for such offences may not be regarded as arbitrary, if reasonably justifiable in the circumstances of the case. This gives law enforcement officials unrestricted power to use lethal force at will, including for minor offences against property, without fearing administrative or legal sanctions. The Special Rapporteur notes with concern that this provision sets the threshold for the use of force excessively low and is incompatible with international law norms.

### 1. Gambian Police Force

37. The Gambian Police Force, mandated to maintain law and order in the country, is headed by the Inspector General of the Police and is placed under the authority of the Ministry of Interior. Police conduct is governed by the Constitution, the 1949 Police Act,[34] the Criminal Procedure Code and the Public Order Act, among other laws. Additionally, the Ministry of Interior is currently revising a draft "Code of Conduct for the Ministry of

[31] See, for example, A/65/280, para. 72, quoted in A/67/275, para. 99.
[32] A/69/265, para. 103.
[33] United States Department of State, "The Gambia 2013 human rights report", p. 7.
[34] As amended by Act 5/1998.

Interior and Security Services under the purview of the Ministry", which will replace the current code. The Special Rapporteur was also provided with a copy of a "Ministry of Interior Policy Manual on the Use of Force", although it is not clear if the document has been adopted or it is still a draft.

38. The Special Rapporteur is concerned that the Gambian legislation setting out the constraints and requirements for the use of force by the police is insufficient. The only instrument setting certain conditions for the use of force is the aforementioned manual, which provides a set of guidelines on "the reasonable" use of force, reporting structures and responsibilities for cases involving force, and directives for situations requiring medical attention. Although reference is made to an immediate threat to life or serious injuries as one of the factors determining such reasonableness, concern is raised that much emphasis is placed on the officer's discretion at the time of the events. While the manual provides for the use of restraining techniques and deadly force in such situations of threat, it does not include directives defining the circumstances, conditions, degree and manner in which such force may be used.

39. On the other hand, the new draft code of conduct is addressed to all officials under the authority of the Ministry, not only law enforcement officials. As a result, the code is vague and focuses on internal management and performance issues, rather than on standards for the use of force, except for reference to the obligation to prevent death in custody and to use force that is lawful and proportionate to the threat. More specific guidelines on the conditions for the use of force, training requirements, and internal accountability mechanisms remain to be integrated into the code.

40. The existing police training manual does not include human rights issues. The Inspector General of the Police has noted the force's aspiration to integrate such training into its curricula. The Special Rapporteur has been informed of discussions with international organizations on the provision of technical assistance in this matter and encourages such an initiative.

41. According to Gambian law, the police are required to obtain a warrant before arresting a person,[35] and the suspect must be informed of the reason for the arrest within three hours, and be either charged or released within 72 hours.[36] However, the Special Rapporteur has received reports that the police sometimes extend the 72-hour limit on detention without charge and seldom conduct arrests pursuant to a warrant. Other deficient arrest procedures include delays in informing detainees of the charges being laid against them, and delays in facilitating access to lawyers and to family members. Several allegations were made about the police using excessive force against suspects during arrest, interrogation and pretrial detention. With regard to the practice of torture or ill-treatment, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has indicated that, while in some individual cases ill-treatment does occur in police stations and during arrest or transfer to police stations, he has not found evidence that such abuses are part of a widespread pattern or systemic practice.[37] The Special Rapporteur on extrajudicial, summary or arbitrary executions recalls that States are held to a heightened level of diligence in protecting the lives of detainees and must take adequate measures to protect their lives.[38]

[35] However, section 15 of the Criminal Procedure Code and other laws allow arrests without a warrant in certain instances.

[36] Article 19 of the Constitution.

[37] See A/HRC/28/68/Add.4.

[38] Luanda Guidelines on the Conditions of Arrest, Police Custody and Pretrial Detention in Africa.

42. The Inspector General of the Police confirmed the existence of paramilitary units, which are established as armed wings of the police and are mandated to conduct crowd control during public events, riots or other civil disruptions, as well as to perform other general policing duties for which they are only armed with a truncheon and handcuffs. Likewise, he noted the existence of an anti-terror unit, consisting generally of police officers who perform their duties unarmed.

43. The Inspector General also confirmed the existence of a unit within the security forces called the "Bulldozers", which reports to the Inspector General and is headed by the Deputy of the Gambian Police Force. It is an operational task force consisting of agents from different security forces who come together, when required by a particular situation, to perform special tasks, which often entail patrolling and arresting suspects who are later rendered to the relevant departments. It has been criticized for abuses in the conduct of its operations. When launching "Operation Bulldozer" in 2012, Mr. Jammeh instructed security forces to "shoot first and ask questions later" to rid the country of all criminals.[39] This message gives security officers the idea that it is permissible to use lethal force as a first resort, which is in stark violation of international standards on the use of force.

### 2. National Intelligence Agency and National Drug Enforcement Agency

44. The legal constraints on the use of force by the National Intelligence Agency and the National Drug Enforcement Agency are even less clear than those on the police. These agencies fall under the responsibility of the President's Office and report directly to him. The National Intelligence Agency is mandated to guard State security, conduct intelligence work and collect intelligence data. Although the Constitution does not provide for the establishment of this agency, the Special Rapporteur was informed that military decrees enacted prior to the adoption of the 1997 Constitution give the National Intelligence Agency broad powers to carry out arrests without charges and to detain individuals indefinitely in the interest of national security. The Special Rapporteur was not able to get hold of a copy of the decrees, and their enforcement was not confirmed or denied by State authorities. Officials interviewed by the Special Rapporteur denied that the National Intelligence Agency assumed police functions of arrest, detention and interrogation, and indicated that such incidents occurred in exceptional cases and until the police could take custody of the suspects. However, the Special Rapporteur received numerous reports to the contrary.

45. The aforementioned code of conduct will not govern the conduct of agents of the National Intelligence Agency or the National Drug Enforcement Agency, as these agencies are not under the authority of the Ministry of Interior. Although officials informed of the existence of a code of conduct for the National Intelligence Agency, the Special Rapporteur was unable to obtain a copy. The Drug Control Act mandates the National Drug Enforcement Agency to investigate drug trafficking and related crimes, and provides some guidelines on their activities. It seems, however, that the National Drug Enforcement Agency is also de facto invested with broad powers to protect State security, and it is not clear what the constraints are on their powers to use force.

46. The Special Rapporteur received alarming reports of persons being detained, tortured, and even disappeared or executed at the hands of the National Intelligence Agency. The reports also indicate that the National Intelligence Agency places arrested suspects in detention facilities within its premises, where persons are held incommunicado without charge for weeks or months before being brought before a judge or the police, are subjected to intense interrogations which routinely include ill-treatment and sometimes

[39] See http://www.statehouse.gm/Operation-Bulldozer-Launched_22052012.htm

torture,[40] and are denied access to a lawyer or to their families. In most cases, family members are not informed of the detention or the whereabouts of the person concerned. Many of those interviewed told the Special Rapporteur of a place called "Bambadinka" in the National Intelligence Agency headquarters, which they say is used for these purposes. In interviews with high-ranking officials of the Agency, the existence of places of detention under Agency jurisdiction was profusely denied.[41] Cases of abuse of power, including death in custody, by agents of the National Drug Enforcement Agency have also been reported to the Special Rapporteur.

47. The Special Rapporteur expresses serious concern about the unchecked and broad powers afforded to the National Intelligence Agency, the National Drug Enforcement Agency and the special units that operate under the umbrella of the Gambian Police Force. The lack of clarity on the rules governing the use of force by law enforcement agencies performing arrest and detention duties provides fertile ground for abuses to take place and is in stark violation of the requirements of international law. In order for abuses not to take place, it is the responsibility of the authorities to establish clear rules, rights and duties for the conduct of all State agents that have law enforcement powers.[42]

### 3. Prison services

48. The Special Rapporteur received reports of cases of excessive use of force and cases of denial of medical care by prison officials that had occasionally led to deaths in custody, which were not adequately examined by forensic experts due to negligence and a lack of in-house forensic expertise.[43] The Government did not provide statistics but advised that all deaths in custody were from natural causes.

### 4. Paramilitary groups

49. The Special Rapporteur received diverse reports and testimonies about the existence of paramilitary groups in the country associated with the security forces and operating under direct orders of the President. A group reportedly called the "Jungullars" or "Junglers" was associated in those reports with arbitrary arrests, detention, torture, enforced disappearances and extrajudicial killings, of persons opposed to the regime, journalists and ordinary civilians. Such a unit, if it exists, will clearly be unlawful under international law and expose anyone involved in it to criminal prosecution. A judicial commission should investigate the very serious allegations in this regard.

50. The Special Rapporteur has also received reports about another group called the "Green Boys", made up of young activists supporting the ruling party and accused, among other things, of taking part in a witch-hunting campaign against hundreds of villagers in 2009. In its discussions with the Special Rapporteur, State officials denied the armed character of the Green Boys, indicating that they were a political group.

51. The Special Rapporteur recalls that there is a positive obligation on the State of the Gambia to ensure the protection of persons under its jurisdiction against violations by private persons or entities. The authorities must exercise due diligence to prevent, investigate, punish and redress the harm caused by non-State actors, and to bring the perpetrators to justice (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18).

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[40] See A/HRC/28/68/Add.4, p. 6.

[41] For further information about allegations of torture by National Intelligence Agency agents, see A/HRC/28/68/Add.4.

[42] A/HRC/26/36, para. 26.

[43] The lack of trained forensic expertise to carry out autopsies appears to be replicated in the police and the judiciary. For further details about forensic services in the Gambia, see A/HRC/28/68/Add.4.

## D. Impunity for extrajudicial executions and enforced disappearances

52. The Special Rapporteur received reports of rampant impunity for extrajudicial executions and unlawful killings against those who are deemed to be opponents or a threat to the regime.

53. Emblematic cases, such as the killing of Deyda Hydara, editor of *The Point Newspaper* and president of the Gambia Press Union, remain unresolved. Mr. Hydara was shot dead in his car in 2004 following the adoption of controversial legislation that he had opposed. The ECOWAS Court of Justice found that the Government had failed to conduct a diligent investigation into the case and ordered the payment of compensation to Mr. Hydara's family.[44] The ruling has not yet been complied with.

54. The Government has also failed to investigate the death of 50 foreign nationals, including 44 Ghanaians, intercepted by security forces in the Gambia on suspicion of planning to overthrow the Government. Reports indicate that the victims were migrants attempting to take a vessel to Europe. A 2009 fact-finding mission by the United Nations and ECOWAS, established to investigate the case, determined the responsibility of rogue security officers for these deaths,[45] however the Government failed to prosecute them.

55. The Special Rapporteur received distressing reports about the secret detention in 2009 of over 1,000 residents of the Foni Kansala district as part of a witch-hunting campaign supported by members of the President's personal guard, the Green Boys, the Gambian Police Force, the National Intelligence Agency, and soldiers. The "witch hunters", reportedly brought in by the President, forced the villagers to drink a herbal concoction and confess to "witchcraft", leading to six deaths from kidney failure. No one was brought to justice for the incident, and one opposition leader who exposed the case was charged with treason and was held in Mile 2 Prison until 2012.[46]

56. In 2011, National Drug Enforcement Agency agents were accused of killing Cherno Alieu Suwareh during a violent arrest. Although two officers were prosecuted, the courts discharged them for lack of evidence.[47]

57. Three alleged plotters were killed during the Government's response to the 2014 attempted coup, as confirmed by the Government. Photographs presented to the Special Rapporteur as being of the dead bodies, if authentic, raise questions about the circumstances that led to their deaths. The apparent pattern of injuries in the photographs does not appear to be consistent with the official version of events. There is no available information on whether official autopsies have been carried out on the bodies of the deceased or on whether appropriate investigations have been launched into the circumstances of their deaths. An in-depth forensic analysis should shed light on the causes of death. The Special Rapporteur sent a communication to the Government requesting clarifications and has received no reply yet.

58. Reports of enforced disappearances were also brought to the attention of the Special Rapporteur, inasmuch as it is feared that they may in fact constitute cases of extrajudicial killing. One such case is the abduction and later disappearance of "Chief" Ebrima Manneh, a journalist at the *Daily Observer*, who was reportedly arrested in July 2006 by government agents, although charges were never brought against him. His whereabouts remain

[44] ECW/CCJ/APP/30/11 of 10 June 2014.

[45] See http://www.state.gov/documents/organization/160123.pdf.

[46] Amnesty International, Article 19 and Rencontre Africaine pour la Défense des Droits de l'Homme, "20 years of fear in Gambia: Time for Justice!".

[47] "The Gambia 2013 human rights report", p. 2.

unknown and there are fears that he may have been executed. The Government denies ever having had him in its custody. The ECOWAS Court of Justice ordered the Government to release him immediately and to pay compensation to his family.[48] The judgement has not been implemented.

59. Much has been made by the Government about the need for international assistance to investigate the cases of Mr. Manneh and Mr. Hydara. In view of the way in which the Government failed to honour its commitment to grant the Special Rapporteurs full access to detainees and to places of detention, there is reason to be concerned that international investigators will likewise not, in the end, receive the support they need in order to do their work properly. Unless the highest authority in the country gives a firm commitment that such investigators will have the access they need, talks about such assistance are likely to be just another attempt to avoid accountability.

60. Also in 2006, five security officers disappeared after having been arrested on suspicion of treason and planning a coup. The Government indicated that, following their arrest, Daba Marenah (former Director General of the National Intelligence Agency), Ebou Lowe, Alieu Ceesay, Alpha Bah and Manlafi Corr managed to escape from the car in which they were being transferred, after the car was involved in a road accident. However, the officers were never seen again and their disappearance was never investigated.

61. Given the time that has elapsed since these abductions and the lack of information regarding the fate and whereabouts of the persons concerned, it is feared that they may have been subjected to unlawful or extrajudicial killings.

62. More recently, reports have emerged regarding the abduction and disappearance of United States-Gambian citizens Alhaji Mamut Ceesay and Ebrima Jobe. They were abducted in June 2013 and their fate and whereabouts remain unknown. Although some unconfirmed reports indicate that they may have been held in detention in some undisclosed location, there are also fears that they may have been extrajudicially killed.

63. In August 2013, Colonel Ndure Cham, a former Chief of Defence of the Gambia who was accused by the Government of plotting a coup in 2006 was reportedly apprehended by the authorities and has never been seen again. Although the circumstances of his arrest and his whereabouts remain unclear, some sources allege that he may have been captured at the border with Senegal and that he may have been summarily executed.

64. The Special Rapporteur recalls the duty of the Government to take measures to prevent and punish deprivation of life by criminal acts, to prevent arbitrary killing by its own security forces, and to conduct thorough, prompt and impartial investigations into all suspected cases of extralegal, arbitrary and summary execution.

## E. Public demonstrations and the use of force

65. In April 2000, 13 students and a journalist were killed and 28 persons were wounded when security forces opened fire during a peaceful demonstration organized by students. An inquiry set up to investigate the events concluded that the security forces deployed to control the demonstration were responsible for the deaths, however the Government subsequently rejected the findings and no one was brought to justice.

66. According to testimonies received, the climate of fear engendered by this event and the impunity that followed have reduced to a minimum the numbers of demonstrations that have taken place in the country since then.

[48] See ECW/CCJ/JUD/03/08.

67. Gambia's legal regime also deters activists from organizing or participating in assemblies. The Gambian Constitution allows the use of force in cases of "riot, insurrection or mutiny" and affords immunity to law enforcement officials for deprivation of life in such circumstances, giving them carte blanche to use force at will. Moreover, the Indemnity Act, adopted a year after the incident, has allowed security officers accused of abuse of force during the demonstration to be indemnified. Additionally, the Public Order Act establishes the requirement of authorization for the organization of rallies or demonstrations.

68. The Special Rapporteur expresses serious concern about the excessive powers — and the concomitant impunity — awarded by Gambian law to security officers to thwart public demonstrations, and about the restrictions imposed for the organization of such acts; and recalls that everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in international law, and that intentional lethal use of firearms in such circumstances may only be made when strictly unavoidable in order to protect life, and otherwise must be investigated and sanctioned by a court of law.[49] Regarding the aforementioned case, he regrets that the use of unwarranted and excessive force by security officers assigned to guarantee public safety led to the death of students and a journalist, and that, 14 years on, the authorities have failed to bring about accountability for those crimes.

## F. Accountability for human rights violations

69. A general culture of accountability and the existence of effective institutional channels for redress are essential for protection of the right to life. On several occasions, the Special Rapporteur heard that police or judicial authorities either do not carry out investigations, or, if they do, they are not carried out properly. Other institutions mandated to address misconduct by law enforcement officials appear to be underutilized or ineffective.

70. It is generally perceived that citizens avoid reporting abuse by the police due to fear of reprisal, lack of substantive redress and a general mistrust of the police. Complaints against the police are generally dealt with by the Complaints and Discipline Unit, based in the Gambian Police Force since 1994, which handles most complaints relating to police misconduct. The Inspector General of the Police informed the Special Rapporteur about the creation in 2012 of a Human Rights Unit within the police force, which deals with complaints of torture and inhuman treatment at the hands of the police. While the Special Rapporteur welcomes the establishment of the unit, he is concerned that, being staffed by police officers and positioned within the police, this complaint mechanism may be perceived as ineffective, vulnerable to internal pressure and lacking impartiality, dissuading victims of abuse from submitting complaints. Moreover, certain victims, for example those held in prisons under police control, may refrain from submitting complaints due to fear of reprisals. The Special Rapporteur was informed that only one complaint has so far been brought before the unit, but it was subsequently withdrawn. The Office of the Ombudsman is also tasked with handling complaints about police misconduct, but has no mandate to investigate human rights violations.[50] Official data about the number of law enforcement officials reprimanded or prosecuted for violations of the right to life under these mechanisms was not forthcoming.

[49] Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principles 12 and 9, and Code of Conduct for Law Enforcement Officials, article 3.

[50] "The Gambia 2013 human rights report", p. 7.

71. Mistrust and fear appear to be amplified in matters that concern accountability for abuses by members of the National Intelligence Agency. The legal gap governing their conduct and, equally, sanctioning their abuses, and the public perception that the institution operates behind a veil of impunity and that, ultimately, it has the power to exercise unrestrained control over the lives of Gambian citizens, makes the lodging of complaints of misconduct by its agents all the more implausible. Citizens are reluctant to denounce abuses, engage legal services or seek redress, even for the most serious violations, including disappearances, torture or probable executions. Moreover, the secrecy in which most of its operations are conducted makes any potential investigation inoperable. Nonetheless, the Special Rapporteur received countless confidential complaints of excessive use of force and possible summary executions by members of the National Intelligence Agency which remain unaccounted for by Gambian judicial, administrative and police institutions.

72. Although the Special Rapporteur received information about a small number of prosecutions of security officers for the death of a suspect in their custody, it seems that not in a single case were the prosecutions successful.

73. The climate of impunity is compounded by a judiciary that lost its independence, being faced with the threat of dismissals, and by the reluctance of lawyers to take on human rights cases out of fear of reprisals against themselves or their families, thereby reducing the options for victims who wish to seek redress and exercise their rights. Although the National Agency for Legal Aid was established to assist persons charged with offences that carry the death sentence or a life sentence, the office is underresourced and overstretched.[51]

74. The Special Rapporteur gets the distinct impression from a number of contacts with officials of the State of the Gambia that they are, at best, unaware of the serious human rights issues facing their country, or are pretending not to know about them, in some cases because they fear for their jobs. This "disinformation" may to some extent be understandable if it were confined to the lower ranks, but it is also prevalent at the highest level. The Minister of Justice, for example, told the Special Rapporteur that the Gambia had appealed the decision of the ECOWAS Court in the case of Ebrima Manneh, which explained the lack of implementation of the judgement — which is not correct. Astonishingly, the Chief Justice emphatically denied any knowledge of the execution of the nine death row prisoners in August 2012, described above, in spite of the fact that these were the only judicial executions to have taken place in the Gambia in the last 27 years, and they were a cause of widespread international reaction. A number of the judges present at the same meeting who admitted to knowing about the executions insisted that all nine had been legitimately convicted for murder and had exhausted their appeal rights, which, as indicated earlier, is not true.

75. Almost all of those in charge of the various security branches of the State, when asked whether they had heard the widespread allegations that there was a hit squad called the "Jungullars" or "Junglers" operating in the country, strongly denied ever having heard such a name. Denying ever having heard the name is obviously a very different thing from denying that such an grouping exists. It is difficult to understand how those who are in charge of the safety of a State that places such a premium on safety cannot be aware of such allegations, given the frequency with which the matter is spoken about in the country and the detailed accounts that the Special Rapporteur heard from people who identify themselves as former members. The impression created is of an attempt to cover the matter up.

[51] For further information about the National Agency for Legal Aid, see A/HRC/28/68/Add.4.

**National human rights institution**

76. The national institutions dealing with human rights issues that are currently operating in the country are ineffective. The mandate of the Office of the Ombudsman is limited and does not include the power of investigation into human rights violations. The Office of the Ombudsman mostly handles administrative claims and does not address cases of excessive use of force. Although empowered to visit places of detention, it reportedly only inspects police cells. Moreover, it is criticized for its lack of independence, incapacity to enforce its recommendations, and lack of human and financial resources, and for the lack of public trust in the institution and its overall ineffectiveness. Following a pledge at the 2010 universal periodic review to establish a national human rights institution, the Government of the Gambia presented a draft bill in 2013, which was perceived as being not fully compliant with international standards, in terms of its independence, its procedures for the appointment and dismissal of members, and its funding. A new draft to be submitted to the National Assembly is pending. It should be emphasized that the creation of a national human rights institution in itself does not mean that human rights issues are addressed — in fact, if it is simply a public relations exercise it can worsen the situation by shielding abuses from further scrutiny.

## G. Groups at risk

77. Human rights defenders, journalists and political opponents are systematically targeted by security agencies and are subjected to arbitrary arrest, detention, torture, enforced disappearance and extrajudicial execution, particularly at the hands of the National Intelligence Agency. Death threats and intimidation against them are also rampant, including from the President himself, who in 2009 threatened to kill anyone who sought to sabotage his Government — in particular human rights defenders and those who support them. These groups of people are also subject to prosecution on charges of sedition, libel and disturbance of public order, under sections 51, 178 and 167 of the Criminal Code, as well as on charges of "false information" and other online offences under the 2013 Information and Communication Act.

78. The Special Rapporteur received concerning reports about hate speech, persecution and violence against LGBT persons in the Gambia. Numerous reports have emerged of threatening and inflammatory public speeches by Mr. Jammeh against homosexuals. Such messages include threats to decapitate any homosexuals found in the country, depictions of gay people as "vermin" who should be treated worse than mosquitoes, threats to kill anyone who seeks asylum who claims to be persecuted for his or her sexual orientation, and assessments of homosexuals as more deadly than all natural disasters put together.

79. He is also concerned about the 2014 amendment to the Criminal Code on "aggravated homosexuality", which carries punishments of up to life in prison and contributes to the existing climate of hostility against LGBT persons. The approval of the amendment was followed by rounds of arrests, prosecutions and attacks, and humiliation and even torture of persons, because of their presumed sexual orientation. In addition, some were detained in the security wing of Mile 2 Prison. The Special Rapporteur warns that hate speech and discriminatory legislation risks inciting societal misconceptions and violence against LGBT persons, putting them at great risk of attacks, humiliation and even murder, and recalls the responsibility of States to respect the human rights of LGBT persons and to avoid discrimination, as well as to prevent and punish violence and abuses against them by third parties.

### H. Fear of reprisals

80. The visit of the Special Rapporteur took place in an atmosphere of fear on the part of civil society, victims, witnesses and other interlocutors. There was a climate of intimidation being experienced by almost every person that the Special Rapporteur interviewed. Some interlocutors conveyed particular concern about possible reprisals following the meeting. Moreover, in the course of an interview, interlocutors indicated their fear that the meeting was being monitored by individuals stationed near the meeting place.

81. From the outset, and in compliance with the terms of reference for fact-finding missions, the Special Rapporteur sought assurances from the authorities that none of the persons he was in contact with or worked with during the visit would be threatened, harassed or punished or be subject to judicial proceedings after the country visit. He received a commitment to that effect at the highest level. The Special Rapporteur trusts that the Government will honour its guarantee. He remains in contact with sources on the ground to monitor the safety of the persons with whom he met. Any incidents of reprisal will be duly reported to the Human Rights Council and the General Assembly.

## VI. Concluding remarks

82. **The invitation to the Special Rapporteurs at a time when the country was also being reviewed at the universal periodic review raised hopes that the Gambia was opening the door to renewed and strengthened engagement with the international community and the United Nations human rights mechanisms, which could help bring about the changes needed for the realization of human rights and the rule of law in the Gambia. That was the Special Rapporteur's expectation, in committing in good faith to the visit. However, the visit entailed serious challenges regarding access and was conducted in an overriding atmosphere of apprehension and fear from many who engaged with him.**

83. **Despite the challenges encountered during the visit, the Special Rapporteur hopes to remain engaged and to work in consultation with the Government and all relevant stakeholders to support the implementation of the recommendations contained in the present report. They are presented in a spirit of cooperation to assist the Government to find solutions to some of the challenges identified herein, that uphold the rule of law and promote accountability for human rights violations.**

84. **The Special Rapporteur believes that there could be a willingness in some sectors of government to exhibit an approach that is more conducive to the realization of human rights. There is, however, a general fear that inhibits such actions. The main cause of this fear resides in the approach followed at the highest levels of government, and that is where there is the greatest need for change.**

## VII. Recommendations

### A. To the Government of the Gambia

#### Legislation

85. **Ratify the human rights treaties to which it is not yet a party, particularly the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and the International Convention for the Protection of All Persons from Enforced Disappearance.**

86. **Deposit with the Secretary-General of the United Nations the instruments of ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, and other instruments as applicable.**

87. **Harmonize domestic law with the Gambia's international treaty obligations.**

88. **Repeal or amend all national legislation that is incompatible with international human rights standards, including:**

**(a) The Criminal Code (Amendment) Acts of 2005 and of 2014, sections 144 and 147, on "carnal knowledge of any person against the order of nature… and any other homosexual act" and "aggravated homosexuality";**

**(b) The Indemnity Act of 2001;**

**(c) The Information and Communication Act of 2013;**

**(d) The amendments to the Criminal Code which broaden definitions and impose harsher penalties for various offences, such as sedition, libel, public disorder, and giving false information;**

**(e) Section 18 (4) of the Constitution, which sets the threshold for the use of force excessively low.**

**Law enforcement**

89. **Ensure that all norms and regulations on the use of force by law enforcement officials comply with international standards, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials.**

90. **Ensure that any use of force by law enforcement officials is proportionate and necessary in view of the threat posed, and that lethal force is only used when absolutely necessary in order to protect life against an immediate threat.**

91. **Provide regular human rights training to law enforcement officials (including those of the National Intelligence Agency and the National Drug Enforcement Agency), correctional service officers and military personnel, and ensure that human rights are an integral part of the curricula of their academies or training programmes.**

**Death penalty**

92. **Ensure that the National Assembly complies with the requirements under the 1997 Constitution to review the desirability of the death penalty, with a view to its abolition.**

93. **Pending abolition of the death penalty, declare an absolute moratorium on executions, excluding any conditionalities; remove from the law any mandatory imposition of the death penalty; commute all outstanding death sentences to term sentences; and ensure better conditions of detention for death row prisoners, as well as visits from their lawyers and family members.**

94. **Under no circumstances should the random and impulsive killing of a number of arbitrarily chosen death row prisoners be repeated.**

**Accountability for human rights violations**

95. **Investigate all cases of extrajudicial, summary or arbitrary execution, enforced disappearance, arbitrary detention and torture or ill-treatment, bring the perpetrators to justice, and provide full reparation to the victims and their families.**

96. **Ensure to human rights defenders, journalists, political opponents and other civil society actors the free exercise of their activities and refrain from harassment and intimidation against them. Investigate and punish all human rights violations against them.**

97. **Guarantee to LGBT persons the full and equal enjoyment of all human rights. Prevent, punish and publicly condemn all violations against them.**

98. **Improve the conditions of detention in all detention centres in the Gambia and investigate all allegations of deaths in custody, torture or ill-treatment.**

99. **Ensure the carrying out of independent forensic examinations into all deaths in custody and in all suspected cases of extrajudicial, arbitrary or summary execution. Examinations should be conducted by experts trained in accordance with international standards, including those contained in the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.**

**Government officials and institutions**

100. **Ensure security of tenure for government officials, including high-ranking ones.**

101. **Ensure and respect the independence and impartiality of the judiciary as a cornerstone for the protection of human rights in the Gambia. Ensure their independent appointment and security of tenure.**

102. **Expedite the establishment of a national human rights institution and ensure that the National Human Rights Commission Bill before the National Assembly fully complies with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). Ensure through appointment and other procedures that an independent institution is established.**

103. **Expand, at least while the process to establish the national human rights institution is pending, the power of the Office of the Ombudsman to include investigations into human rights violations, and ensure that it is independently appointed and has sufficient autonomy and resources to carry out its mandate effectively.**

104. **Strengthen the independence and effectiveness of the Human Rights Unit within the Gambian Police Force and establish similar units within the National Intelligence Agency and the National Drug Enforcement Agency.**

105. **Establish a special judicial commission of inquiry to investigate whether there is a paramilitary group called the "Jungullars" or "Junglers" and also to visit the alleged places of abuse, such as the National Intelligence Agency headquarters and the maximum security wing of Mile 2 Prison, and initiate iuvestigations, prosecutions and convictions.**

106. **Ensure an active role of the judiciary in the oversight of prisons and places of detention. Upon ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, establish a national preventive mechanism in accordance with article 17 of the Optional**

**Protocol or designate the national human rights commission, when established in compliance with the Paris Principles, as such mechanism. The mechanism should be mandated to conduct unannounced visits to all places of detention, to receive complaints, to initiate or recommend prosecutions, to produce findings and to implement recommendations.**

107. **Ensure that all legislation and regulations governing the conduct of law enforcement officials are publicly available and easily accessible.**

108. **Include human rights in the training curricula for all law enforcement officials.**

**International and regional organizations**

109. **Commit to full respect of the terms of reference for fact-finding missions and issue a standing invitation to all special procedures of the Human Rights Council. Consider prioritizing the visits of the Working Group on Enforced or Involuntary Disappearances, the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Working Group on Death Penalty and Extra-Judicial, Summary or Arbitrary Killings in Africa.**

110. **Ensure regular and timely reporting to the human rights treaty bodies.**

111. **Formulate a national action plan, through an inclusive process with participation from civil society, to implement the recommendations of the universal periodic review.**

112. **Comply with the ruling of the ECOWAS Court of Justice in the cases of Mr. Hydara and Mr. Manneh requesting the carrying out of a diligent investigation on the cases and the payment of compensation to the families.**

B. **To the international community**

113. **Monitor the human rights situation in the Gambia and bring any abuses, in particular right-to-life abuses, to public scrutiny and debate.**

114. **Consider providing funds to support the work or the establishment of credible local civil society organizations working on the promotion and protection of human rights.**

115. **Accompany and support the Government in the implementation of the present recommendations.**

C. **To civil society and other actors**

116. **Monitor the human rights situation in the Gambia and bring any abuses to public scrutiny.**

117. **Provide assistance to and support the work of local civil society organizations working on the promotion and protection of human rights.**

118. **Accompany and support the Government in the implementation of the present recommendations.**

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**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

# Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns

**Addendum**

## Follow-up to country recommendations: India*

*Summary*

In the present report, the Special Rapporteur on extrajudicial, summary or arbitrary executions analyses the steps taken by India to implement the recommendations contained in the report made following his visit to the country from 19 to 30 March 2012. During that visit, the Special Rapporteur documented extrajudicial killings by security officers, the State Police, Armed Forces and armed groups. He also reported killings related to communal violence and practices affecting women's right to life as a serious problem in some areas of the country. In addition, he noted a number of challenges at various stages of the accountability process leading to impunity in many instances.

Since the visit, the Government has taken some steps to address human rights violations committed against women and in support of victims of terrorist-related activities. However, vulnerable groups remain at risk of violent and often lethal attacks. Impunity remains a serious challenge, as does the implementation of existing guidelines and directives issued by the courts and national human rights institution. The Special Rapporteur urges the Government to implement the recommendations contained in the visit report insofar as this has not been done.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission only.

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# Annex

*[English only]*

## Follow-up country recommendations: India

Contents


| | | *Paragraphs* | *Page* |
|---|---|---|---|
| I. | Introduction | 1–6 | 3 |
| II. | Methodology | 7–9 | 4 |
| III. | Violation of the right to life by State actors | 10–26 | 4 |
| | A. Deaths resulting from excessive use of force | 10–14 | 4 |
| | B. The Armed Forces (Special Powers) Act and related legislation | 15–19 | 5 |
| | C. Deaths in custody | 20–23 | 7 |
| | D. Imposition of the death penalty | 24–26 | 8 |
| IV. | Violations of the right to life by non-State actors | 27–38 | 9 |
| | A. Deaths resulting from attacks by armed groups | 27 | 9 |
| | B. Killings related to communal violence | 28–30 | 9 |
| | C. Practice affecting women's right to life | 31–38 | 10 |
| V. | Other challenges | 39–55 | 11 |
| | A. Fight against impunity | 39–46 | 11 |
| | B. Killings of vulnerable persons | 47–55 | 13 |
| VI. | The role of Human Rights Commissions | 56–59 | 15 |
| VII. | Conclusions | 60–62 | 15 |
| Appendix | | | |
| | Summary of follow-up to each recommendation | | 16 |

# I. Introduction

1. The Special Rapporteur on extrajudicial, summary or arbitrary executions conducted a country visit to India from 19 to 30 March 2012. He presented his country visit report to the Human Rights Council at its twenty-third session (A/HRC/23/47/Add.1). The country visit report provided an overview of the findings and 31 concrete recommendations.

2. The present follow-up report contains an analysis of the progress made by India in implementing the recommendations made in the country visit report, based on desk research.

3. During his visit, the Special Rapporteur documented deaths resulting from the excessive use of force, deaths in custody, the imposition of the death penalty, attacks by armed groups, killings related to communal violence and practices affecting women's right to life. He further addressed the fight against impunity, killings of vulnerable persons and the role of human rights commissions, highlighting that the obstacles to accountability should be removed.

4. The Special Rapporteur made a number of recommendations regarding the need to reform laws and policies to ensure the accountability of State actors for violations of the right to life; the establishment of a commission of inquiry into extrajudicial executions in India, which should also serve a transitional justice role; the need to increase the protection of civilians, especially vulnerable groups, through legal reform as well as information and awareness-raising campaigns and increased sensitization and orientation programmes; and the need to strengthen State institutions, including the judiciary and the National Human Rights Commission.

5. Since the visit, measures that have been undertaken to implement the recommendations made. There has been reform at the legislative level, with some bills pending before parliament. The Supreme Court of India appointed a commission on 4 January 2013 to inquire into six alleged cases of extrajudicial executions and to record its findings regarding the antecedents of the victims and the circumstances in which they were killed. The commission was also directed to report on the functioning of the State Police and the Security Forces in the state of Manipur and to make recommendations for keeping the police and security forces within the legal bounds without compromising the fight against insurgencies. The Commission also addressed the larger question on the role of the police and the security forces in Manipur. On 23 December 2012, the Government also constituted a committee to look into possible amendments to the Criminal Law to provide for quicker trials and enhanced punishments for criminals committing sexual assault of an extreme nature against women. The reports of both bodies contain useful recommendations to further strengthen State institutions and the protection of the right to life.[1]

6. However, much remains to be done to address and prevent extrajudicial killings and to ensure accountability. Often, guidelines provided by the courts or the National Human Rights Commission and recommendations by commissions of inquiry remain on paper with little or no implementation on the ground. Impunity continues to prevail with various

[1] See *Extra Judicial Execution Victim Families Association* v. *Union of India* and *Suresh Singh* v. *Union of India*, W.P. (Crl.) No. 129 of 2012, available from http://humanrightsmanipur.wordpress.com/2013/07/24/report-of-the-justice-n-santosh-hegde-headed-commission-appointed-by-the-supreme-court-of-india/ and Report of the Committee on Amendments to Criminal Law, 23 January 2013, available from www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf.

legislative provisions and practices that hinder full and proper accountability. The result is that vulnerable persons, including women, marginalized communities, human rights defenders, victims and witnesses, continue to remain at risk of violence, often resulting in death.

## II. Methodology

7. In paragraph 8 of its resolution 26/12, the Human Rights Council urged States, inter alia, to cooperate with and assist the Special Rapporteur in the performance of his tasks, to supply all necessary information requested by him and to ensure appropriate follow-up to his recommendations and conclusions. In this context, when writing his follow-up reports, the Special Rapporteur requests States to provide him with information on the actions taken on those recommendations. Such information, when provided, helps to ensure a comprehensive report that gives full recognition to all steps taken.

8. The Special Rapporteur recognizes the importance of follow-up reports as a critical component of country visits to investigate allegations of violations of the right to life, and as a principal working method. Country visits are an essential means to obtain direct and first-hand information on human rights violations.

9. The present follow-up report was prepared on the basis of all available information and was completed on 30 April 2015. The Special Rapporteur requested information from the Government and from other actors on the steps that had been taken to implement the recommendations made. The Special Rapporteur thanks the Government of India for its response dated 21 April 2015 and for the information provided. Consultations were also undertaken with domestic and international civil society groups. The Special Rapporteur expresses his gratitude to all stakeholders who contributed to the present report.

## III. Violations of the right to life by State actors

### A. Deaths resulting from excessive use of force

10. During his country visit, the Special Rapporteur received a series of complaints regarding deaths resulting from the excessive use of force by security officers. The force used, according to the reports, had little adherence to the principles of proportionality and necessity, as defined under international human rights law standards. In the country visit report, the Special Rapporteur referred to India's National Crime Records Bureau statistics, which indicate that, in 2011, there were 109 civilian deaths owing to police firing (See A/HRC/23/47/Add.1, para. 9). The 2013 Bureau statistics indicate that the number of civilian deaths owing to police firing had decreased only marginally, to 103 civilians.[2]

11. In his country visit report, the Special Rapporteur recommended that section 46 of the Code of Criminal Procedure and legislation in all states regarding use of force, including the exceptional use of lethal force, by all security officers should be reviewed to ensure compliance with international human rights law principles (see A/HRC/23/47/Add.1, para. 102). He was especially concerned with section 46 of the Code, as it authorizes law enforcement officials to use "all means necessary" when an arrest is forcibly resisted, without further qualifications, allowing force that goes beyond those

[2] See National Crime Records Bureau, Ministry of Home Affairs, "Crime in India 2013 – Statistics", p. 564.

powers permitted under international human rights law. The Special Rapporteur regrets that the section has so far not been reviewed or amended.

12. The Special Rapporteur also noted in his country visit report that the disproportionate use of force by law enforcement officials was often the cause of death during demonstrations, and specific reference was made to the excessive use of force against demonstrators in the Jammu and Kashmir regions in 2010. The Special Rapporteur takes note of the information provided in the response by the State that there were 2,241 demonstrations in 2010 in Jammu and Kashmir and that, regrettably, not all of them were peaceful. High numbers of civilians, police personnel and security forces were injured in those demonstrations. The State has indicated that, in all instances of death, a First Information Report was lodged and an investigation initiated. This would be an encouraging development. However, the Special Rapporteur emphasizes the need for such investigations to be completed soon, and urges the State to make public all findings from such investigations and ensure that the policing of demonstrations, including non-peaceful demonstrations, is always in compliance with the international human rights standards on the use of force.

13. The country visit report documented the practice of "fake encounters" and the accusations that it had been carried out by the police, the central armed forces, armed forces and the border security forces. The Special Rapporteur notes of the recent conviction of and recommended life sentences for five security officers for the fake encounter that occurred on 30 April 2010, in which three youths were killed by the armed forces. This is a welcome instance of accountability.

14. The country visit report also documented the registration of First Information Reports by security officers after alleged fake encounters, in which they gave their accounts of the events. This often led to the swift closure of cases, as the content of the reports was frequently undisputed. The Special Rapporteur recommended that the registration of a First Information Report should be prompt and mandatory in all cases of suspected unlawful killings and death threats. It was also recommended that an independent mechanism be put in place to monitor the registration of First Information Reports, as well as the punishment of those law enforcement officials who refuse to register them (see A/HRC/23/47/Add.1, para. 110). The Criminal Appellate Division of the Supreme Court of India recently confirmed that, when investigating police encounters in cases of death, as a standard procedure for thorough, effective and independent investigation, a First Information Report should be registered and forwarded to the Court under section 157 of the Code of Criminal Procedure without delay.[3] The Supreme Court issued a number of requirements, many based on the National Human Rights Commission guidelines on encounter deaths and statutory provisions, to be followed when investigating police encounters that result in death of a civilian. No independent mechanism to monitor the registration of First Information Reports exists.

## B. The Armed Forces (Special Powers) Act and related legislation

15. In his country visit report, the Special Rapporteur noted that the situation concerning the use of force in India was exacerbated by the implementation of the Armed Forces (Special Powers) Act. The Act is applied in areas that have been declared "disturbed" or "dangerous" to the extent that the use of armed force is deemed necessary. These have included areas of Manipur, Assam, Arunachal Pradesh, Meghalaya, Mizoram, Nagaland

[3] *People's Union for Civil Liberties & Anr. v. State of Maharashtra & Ors*, Criminal Appeal No. 1255 of 1999, decided on 23 September 2014, para. 31 (2).

and Tripur, while in Jammu and Kashmir, a nearly identical piece of legislation known as the Jammu and Kashmir Armed Forces (Special Powers) Act is applied.

16. Particular concern was expressed in the report over the provisions in the Act regulating the use of lethal force, in violation of the international standards on the use of force, and the related principles of proportionality and necessity. The Special Rapporteur also expressed his concern at the protection granted to officers under the Armed Forces (Special Powers) Act and the Jammu and Kashmir Act, where the prosecution of such officers is prohibited unless sanction to prosecute is granted by the central Government. This rarely occurs in practice. Thus, accountability for extrajudicial or arbitrary killings committed by armed forces members is frequently made practically impossible.[4] The Indian Supreme Court upheld the constitutionality of the Act and provided several conditions on the use of the special powers conferred on the Armed Forces by section 4 thereof.[5] This part of the country visit report in particular was strenuously opposed by the Government in its comments thereto, on the basis that the State viewed it as a gross disregard for the Supreme Court (see A/HRC/23/47/Add.7, para. 1). This approach seems not to take into account the fact that the special procedures of the Human Rights Council regularly pronounce on the rulings of domestic courts from all over the world, in line with the established principle of international law that States are internationally responsible for the actions of all their organs (see General Assembly resolution 65/19).

17. Several international bodies and Indian authorities have subsequently also expressed concern over the provisions of the Armed Forces (Special Powers) Act. The Justice Verma Committee, constituted in December 2012 as a result and within a few days of the brutal gang rape and murder committed in New Delhi on 16 December 2012, recommended the continuance of the Armed Forces (Special Powers) Act and similar legal protocols in internal conflict areas be immediately reviewed. The Committee found that the review was necessary in order to determine the propriety of resorting to such legislation in the areas concerned.[6] In July 2014, the Committee on the Elimination of Discrimination against Women called upon India to implement the recommendations of the Justice Verma Committee and to promptly review the continued application of Act and related legal protocols (see CEDAW/C/IND/CO/4-5, para. 13 (a)). The Committee also urged India to amend and/or repeal the Act, so that sexual violence against women perpetrated by members of the armed forces could be brought under the purview of ordinary criminal law and, pending such amendment or repeal, to remove the requirement for government permission to prosecute members of the armed forces accused of crimes of violence against women or other human rights abuses of women, and to grant permission to enable prosecution in all pending cases.

18. In part V, paragraph 5.4 of its report,[7] a commission appointed by the Supreme Court stated that it was time to progressively de-notify areas of the State under the Act, and to withdraw section 144 of the Code of Criminal Procedure. That commission agreed with the Jeevan Reddy Committee created to review the Act. The Committee's report has not been made public, but determined that the Act had become a symbol of oppression, an object of hate and an instrument of discrimination and high-handedness, and that it was highly desirable and advisable to repeal it altogether. In part IV, paragraph 3.10 of its

[4] See *Army Headquarters v. CBI*, 2012 6 SCC 228.

[5] See *Naga People's Movement of Human Rights* v. *Union of India And Others*, Supreme Court of India, 27 November 1997, para. 79 (8).

[6] Report of the Committee on Amendments to Criminal Law, 23 January 2013, available from www.thehindu.com/multimedia/archive/01340/Justice_Verma_Comm_1340438a.pdf.

[7] Available from https://humanrightsmanipur.files.wordpress.com/2013/07/ejevfam.pdf.

report, the commission found that the conditions laid down by the Supreme Court had remained largely on paper only and were mostly followed in violation.

19. The Special Rapporteur, however, regrets that India has not followed the recommendation that it repeal or at least radically amend the Act, as well as the equivalent legislation in Jammu and Kashmir, to ensure that legislation regarding the use of force is brought in line with international human rights law and to remove all legal barriers for the criminal prosecution of members of the armed forces. The Special Rapporteur also recommended that, while waiting for the necessary repeal or amendment of the Act, it must be ensured that the status of a "disturbed area" is subject to regular review and a justified decision is made on its further extension.[8] In that regard, he has been informed that states of the North-East and Jammu and Kashmir regions continue to be declared "disturbed areas", without any deliberation, justification or reference to the scale of insurgency in the respective areas.[9]

## C. Deaths in custody

20. In his country visit report, the Special Rapporteur noted that, throughout his visit to the State, several cases of custodial deaths were reported to him. These reports spoke of individuals who had allegedly been unlawfully taken into custody, severely beaten and later died in hospital. Serious concern was expressed at the fact that no steps had been taken to bring the perpetrators to account for the deaths. The National Crime Records Bureau data for 2011 indicated that over 100 deaths had occurred in police custody in India and that none of the 14 police officers against whom formal accusations had been brought were convicted (see A/HRC/23/47/Add.1, para. 29). The 2013 Bureau data indicates that over 100 police custodial deaths were reported and that there was one conviction.[10]

21. The Special Rapporteur welcomed the National Human Rights Commission guidelines on custodial deaths and rapes, which include guidelines on the period within which a death is to be reported, the procedure to be followed and methods to conduct autopsies. The Code of Criminal Procedure (Amendment) Act of 2005 mandates that a judicial inquiry must take place in all instances where any person dies or disappears while in custody of the police or in any other custody. The Special Rapporteur, however, also expressed concern that these provisions are not complied with in practice. This was confirmed the aforementioned commission appointed by the Supreme Court, which, in part IV, paragraphs 4.6 and 4.9 of its report, found that, in the cases before it, magisterial enquiries and judicial enquiries had only been ordered after a lapse of a couple of years; and that the National Human Rights Commission guidelines on search, seizure and inquests were not being followed in instances of police action resulting in death.

22. The Special Rapporteur made a recommendation that autopsies be carried out in conformity with international standards and that the families of victims be given full and easy access to autopsy reports, as well as death certificates and other relevant documentation to allow them to proceed with the closure of the cases (see A/HRC/23/47/Add.1, para. 117). The commission appointed by the Supreme Court observed serious lapses on the part of the police during their operation and investigations.

[8] Section 3 of the Act allows the Governor of a state or the Administrator of a union territory of the central Government to declare the whole or part of a state or union territory to be a disturbed area.

[9] At the time of writing, there were ongoing discussions in the Jammu and Kashmir region on the possible revocation of the Jammu and Kashmir Act.

[10] See National Crime Records Bureau, Ministry of Home Affairs, "Crime in India 2013 – Statistics", p. 554.

and recommended that post-mortems be conducted as quickly as possible after incidents, that post-mortems in encounter cases should be video recorded, and that a hand wash of the deceased must be taken and sent for forensic analysis, which is necessary because of the frequent contention by security forces that the deceased fired at them.

23. The Special Rapporteur also recommended that India ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, and that it swiftly enact the Prevention of Torture Bill and ensure its compliance with the Convention. The Bill was introduced in 2010 but, despite provisional steps taken to enact it, no further steps seem to have been taken in this regard.

## D. Imposition of the death penalty

24. In his country visit report, the Special Rapporteur noted his concern regarding the execution that took place in 2012, the first since 2004, when a de facto moratorium on executions was introduced. Further concern was noted in relation to legislative provisions that provided for the imposition of the death penalty for offences that did not comply with the "most serious crime" provision under international law, and the extension of offences for which the death penalty may be imposed. In 2013, India performed another execution and, in 2014, again voted against the General Assembly draft resolution calling for a moratorium on the death penalty.

25. The Special Rapporteur recommended that India consider placing a moratorium on the death penalty with a view to abolishing it and that legislation be reviewed to provide that the death penalty may only be imposed for the most serious crimes, such as intentional killing. The State is again called upon to consider implementing these recommendations as a priority. The Special Rapporteur welcomes the fact that the Law Commission of India is undertaking a research project on the death penalty. As part of that process, in May 2014, the Commission published a consultation paper[11] on capital punishment, including a detailed questionnaire and an invitation to submit written suggestions, comments and input into the study. The Commission intends to collect data relating to the death penalty from various courts and prison authorities, and may include the research assistance of law schools.

26. The Special Rapporteur welcomes the recent decision of the Supreme Court in the matter of *Shatrughan Chauhan* v. *Union of India*,[12] by which the Court held that the death sentence of a condemned prisoner could be commuted to life imprisonment on the basis of a delay on the part of the Government in deciding a mercy plea. The Court held that the prolonged delay in implementing the death sentence had a dehumanizing effect, which in turn had the constitutional implication of depriving a person of his/her life in an unjust, unfair and unreasonable way so as to offend the fundamental right to life under article 21 of the Constitution. In so doing, the Court commuted the death penalty to life imprisonment for 15 death row inmates. The Court further held that mental illness was one of the supervening circumstances that warranted commutation of a death sentence to life imprisonment.

[11] Available from www.deathpenaltyindia.com/external-resources/.

[12] 2014 3 SCC 1. See also *Union of India* v. *V. Sriharan @* Murugan, 2014 4 SCC 242.

# IV. Violations of the right to life by non-State actors

## A. Deaths resulting from attacks by armed groups

27. The Special Rapporteur has expressed concern that non-State actors resorting to the use of deadly violence have threatened the lives and security of civilians and the security of India and strongly condemns the callous nature of these acts. The State has a duty to protect its people from such acts of violence, but should do so in accordance with international human rights standards.

## B. Killings related to communal violence

28. In his country visit report, the Special Rapporteur noted that tension between various communities in India frequently resulted in incidents of communal violence. Numerous reports concerning major incidents of communal violence indicated an often wilful failure by State forces to protect citizens. The Special Rapporteur documented reports of apparent tolerance by State forces of attacks against religious minorities. More alarming were reports that State agents were actively involved in attacks on the lives and rights of such minorities. The Special Rapporteur highlighted statistics from 2011 that indicated that 91 people had died that year in incidents of communal violence (See A/HRC/23/47/Add.1, paras. 43 and 44). Statistics for 2013 indicate that the figure has only decreased slightly to 71 deaths.[13]

29. During the country visit, special attention was drawn to the high level of communal violence in Gujarat. In his report, the Special Rapporteur expressed concern at the lengthy and less than effective conduct of the inquiries carried out at that time into the events. He recommended that the Nanavati-Metha Commission, established in 2002 and appointed to investigate the events that took place in Gujarat that year, should ensure that their findings are published in a swift and transparent manner. At the time of drafting the present report, the Nanavati-Metha Commission had concluded its investigation, 12 years and more than 20 extensions later, and submitted its final report to the Chief Minister of Gujarat in 2014. The report has not been made public and the content of the report is unknown. The Special Rapporteur calls on the Government to make the Commission's full report public.

30. In the context of investigating and addressing communal violence, the Special Rapporteur mentioned in his country visit report the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill of 2011, which aimed at preventing communal violence and ensuring accountability for the failure to prevent such violence and protect life and property. The Bill also introduced the principle of command and/or superior responsibility, and stipulated the rights of victims to reparations and remedies. The Special Rapporteur notes that the Bill has not been passed. The Special Rapporteur welcomes the statement made by the Prime Minister on 17 February 2015 expressing strong condemnation of religious violence and undertaking to act strongly in this regard.

[13] See National Crime Records Bureau, Ministry of Home Affairs, "Crime in India 2013 – Statistics", p. 331.

## C. Practice affecting women's right to life

31. The Special Rapporteur welcomes the report of the Justice Verma Committee[14] and notes that the implementation of its recommendations has the potential to bring much-needed and effective change in preventing violence against women, by holding the State accountable, ensuring the necessary commitment and change required in both law and policy, as well as in the implementation thereof. In its comprehensive report, the Committee addresses all forms of violence against women; calls for police, electoral and education and perception reform; proposes a number of criminal law amendments, an emergency response system and the creation of a bill of rights for women; and suggests guidelines for medical examinations. While some steps have already been taken by the Government to implement the recommendations made by the Committee, these have not been without criticism, and much more is needed – a fact that has been recognized by the State.

32. In his country visit report, the Special Rapporteur called upon the State to review its criminal legislation to ensure that all gender-based killings receive high sentences, possibly in the form of life imprisonment. The recommendations of the Justice Verma Committee, as well as some amendments that have already been made to India's Criminal Law, show that positive steps are being taken.

33. However, the Special Rapporteur is concerned that the Criminal Law (Amendment) Bill passed by parliament through an amendment to the Penal Code allows for the death penalty to be imposed for repeat offenders of rape and in cases of brutal rape that render the survivor in a vegetative state. This is not in compliance with the "most serious crime" requirement under international law and goes against the recommendation of the Justice Verma Committee that life imprisonment be imposed where rape results in the death or the persistent vegetative state of the victim. While the attempt by the State to seriously address acts of violence perpetrated against women is commended, the Special Rapporteur does not encourage the imposition of the death penalty in such cases.

### Dowry deaths, "honour" and witch killings

34. In his country visit report, the Special Rapporteur recommended that the State require that the police, judiciary and general public undertake increased sensitization and orientation programmes in respect of all forms of killings of women, especially in the areas most affected (see A/HRC/23/47/Add.1, para. 119).

35. The Special Rapporteur and the Committee on the Elimination of Discrimination against Women have expressed concern at the extent of dowry deaths in India. The 2013 National Crime Records Bureau statistics reflect a very small reduction in the number of dowry deaths,[15] although the figures reported by the Bureau in 2011 and 2013 may not fully reflect the scope of the problem, owing to underreporting. The Special Rapporteur supports the call made by the Committee in 2014 for the State to implement systemic and sustained action that would lead to the elimination of stereotypes associated with dowry deaths as well as the practice itself (see CEDAW/C/IND/CO/4-5, para. 20). The Special Rapporteur also supports the recommendation of the Justice Verma Committee that all marriages in India, irrespective of the personal laws under which such marriages are solemnized, be mandatorily registered in the presence of a magistrate, who should ensure that the marriage

[14] Available from www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf.

[15] See National Crime Records Bureau, Ministry of Home Affairs, "Crime in India 2013 – Statistics", p. 387.

has been solemnized without any demand for dowry and with the full and free consent of both partners.

36. "Honour" killings, as documented in the country visit report, remain a problem in India. The Justice Verma Committee addressed the practice of such killings and concluded that the State must ensure that village councils, also known as "Khap Panchayats", and similar institutions do not interfere with the choices made by men and women in respect of marriage.

37. The phenomenon of witch killings in parts of India was observed and documented by the Special Rapporteur in his country visit report (see A/HRC/23/47/Add.1, para. 61). The practice, which is almost exclusively directed against women, was reported to be most prevalent in poorer and marginalized communities. The Special Rapporteur welcomes the response of the State that killings motivated by accusations of witchcraft are acknowledged and tackled at the local level by State authorities (see A/HRC/23/47/Add.7, para. 2).

38. The Committee on the Elimination of Discrimination against Women expressed its concern in 2014 over persistent traditional practices that contribute to the dangerous gender-based stereotypes surrounding witchcraft. The Committee expressed disappointment at the State's insufficient actions to systemically and consistently modify and eliminate the harmful stereotypes that contribute to killings motivated by allegations of witchcraft (see CEDAW/C/IND/CO/4-5, para. 20). In the country visit report, it was noted that legislation against witch-hunting existed in some parts of India. However, concern exists over the adequacy of the punishment and of exposing women accused of witchcraft to stigma, public humiliation, violence and, in most severe cases, death. Further challenges include witnesses who are often unwilling to testify against offenders owing to societal pressure and fear of being associated with a witch, and instances where the witness considers death as an appropriate punishment. Furthermore, it was reported to the Special Rapporteur that women from rural areas and with no financial means faced severe challenges in gaining access to justice, including owing to the reluctance of the police to register and investigate their cases.

# V. Other challenges

## A. Fight against impunity

39. In his country visit report, the Special Rapporteur documented various factors that contribute to the challenge of impunity in India. In order to address some of those challenges, he recommended that legal barriers for the prosecution of public servants be removed, including the requirement for prior sanction from the Government, and that section 197 of the Criminal Procedure Code be reviewed (see A/HRC/23/47/Add.1, para. 103). Pursuant to the recommendation of the Justice Verma Committee, the Special Rapporteur welcomes that an explanation has been added to section 197 (1) of the Criminal Procedure Code, to clarify that no prior sanction is necessary for the prosecution of public servants who are accused of sexual offences.[16] However, for all other crimes, the prior sanction provision continues to be a major hurdle for victims in securing remedies for human rights violations.

40. The Special Rapporteur recommended that the State ensure that command and/or superior responsibility be applied for violations by security officials of the right to life, and

[16] See www.prsindia.org/uploads/media/Criminal%20Law,%202013/Criminal%20Law%20%28A%29,%202013.pdf.

that the establishment and effective functioning of the Independent Police Complaints Authorities should be made a priority in all states (see A/HRC/23/47/Add.1, paras. 109 and 113). The Special Rapporteur regrets that, according to the information received, that responsibility remains absent.

41. In his country visit report, the Special Rapporteur recommended that promotions and other types of awards for security officers suspected to have been involved in unlawful killings should not be granted until the facts are fully clarified (ibid., para. 112). The Special Rapporteur notes the order of the Supreme Court in relation to encounter killings, in the matter of *People's Union for Civil Liberties (PUCL) & Anr.* v. *State of Maharashtra & Ors.*,[17] that "no out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/recommended only when the gallantry of the concerned officers is established beyond doubt".

42. The Special Rapporteur welcomes the order of the Supreme Court and calls upon the Government to ensure its full and proper implementation. He notes with concern reports that police officers who have been suspended upon their arrest in cases of suspected extrajudicial killings and charged with extrajudicial killings have been reinstated in senior positions in the police force by the State. The Special Rapporteur is concerned that this will encourage impunity and may impede the criminal trials against the reinstated officers.[18]

43. The Special Rapporteur also recommended that the Government put in place a mechanism to regularly review and monitor the status of implementation of the directives of the Supreme Court and the National Human Rights Commission guidelines on arrest, encounter killings, and custodial violence and death (see A/HRC/23/47/Add.1, para. 108). The Special Rapporteur has been informed that, so far, no mechanism has been put in place to undertake the review and monitoring as recommended.

44. The country visit report included some of the challenges in the accountability process, for which it was recommended that the State consider launching a process of reflection on the need to reform its judiciary with the aim of reducing the length of judicial proceedings and strengthening the independent functioning of the judiciary (see A/HRC/23/47/Add.1, paras. 67 and 125). The Special Rapporteur is not aware of any such process, as recommended, being undertaken.

45. The Special Rapporteur recommended that the State ensure, in addition to the payment of compensation to the victims or their families, that criminal investigations, prosecutions and trials be launched and conducted in a swift, effective and impartial manner in all cases of unlawful killings, irrespective of the status of the perpetrator. The recommendation was made on the basis of concern expressed after the country visit, regarding cases involving unlawful killings, that the practice of paying compensation to victims or their families has often replaced prosecution (ibid., paras. 73 and 111). The Special Rapporteur notes the order of the Supreme Court in *People's Union for Civil Liberties (PUCL) & Anr. v. State of Maharashtra & Ors.*, that compensation be paid under section 357-A of the Criminal Procedure Code. While compensation is crucial in redressing violations, it should never replace the investigation and prosecution of alleged perpetrators. The investigations and prosecutions must be launched in a swift, effective and impartial

[17] Available from http://supremecourtofindia.nic.in/outtoday/ar12551999.pdf.

[18] Reports indicate that police officials charged for the suspected unlawful killing of Ishrat Jahan, Javed Sheikh, Amjadali Rana and Jishan Johar, as well as police officials charged for the suspected unlawful killing of Sohrabuddin Sheikh, Kausarbi and Tulsiram Prajapati, were reinstated in the police service by the State of Gujarat in February 2015.

manner. Examples of protracted investigations and prosecutions have been brought to the attention of the Special Rapporteur, including:

- The ongoing trial of 19 members of the Provincial Armed Constabulary for the alleged unlawful killings of 42 Muslim men in 1987[19]
- The delay in the commencement of the trial of officers implicated in the 2004 unlawful killing of four civilians, including a young woman, despite the filing of a charge sheet by the Central Bureau of Investigation[20]

46. The Special Rapporteur recommended that the National Human Rights Commission issue guidelines on the conduct of inquests and autopsies in all cases of suspected unlawful killings (see A/HRC/23/47/Add.1, para. 122). At the time of writing the present report, the Special Rapporteur was not aware of any steps taken in this regard.

## B. Killings of vulnerable persons

### 1. Scheduled castes and tribes and other marginalized communities

47. In his country visit report, the Special Rapporteur noted that, according to the National Crime Records Bureau, 35 murders had been committed in 2011 for caste-related reasons (ibid., para. 77). In 2013, according to the Bureau, the figure had decreased to 32 murders.[21] The figures quoted by the Bureau differ substantially from those provided by non-governmental organizations. The Special Rapporteur recommended that existing criminal legislation be reviewed to ensure that perpetrators of killings against members of lowers castes or tribes receive higher sentences, perhaps life imprisonment (see A/HRC/23/47/Add.1, para. 105).

48. The Special Rapporteur also noted with concern that the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 did not incorporate Dalit Muslims and Christians into the definition of scheduled castes and tribes. A recommendation was made that the legislation should be reviewed to extend the definition (see A/HRC/23/47/Add.1, para. 104). The Committee on the Elimination of Discrimination against Women noted in 2014 that Dalit women were particularly vulnerable as they faced multiple forms of discrimination presenting barriers to justice and that poor implementation of the Act was of concern (see CEDAW/C/IND/CO/4-5, para. 10 (d)). The Special Rapporteur is aware of the recent passing of the Constitution (Scheduled Castes) Orders (Amendment) Bill, 2014, and welcomes the inclusion of additional communities to the list of scheduled castes, but reiterates the importance of ensuring the protection of all marginalized communities in practice through effective implementation of the related legislation, as well as the conduct of relevant education and awareness-raising campaigns reaching out to all communities.

49. The Special Rapporteur welcomes the introduction of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill of 2014, which includes new categories of offences; specifies the duties of a public servant, including to register a complaint or First Information Report; provides that the Exclusive Special Courts must be established at the district level to try offences; and adds a chapter on the rights of victims

[19] See http://infochangeindia.org/human-rights/features/hashimpura-the-massacre-that-everyone-forgot.html.

[20] See http://indianexpress.com/article/india/gujarat/cop-accused-by-cbi-of-firing-at-ishrat-is-back-at-work/.

[21] See National Crime Records Bureau, Ministry of Home Affairs, "Crime in India 2013 – Statistics", p. 331.

and witnesses, including taking immediate action in respect of any complaint relating to the harassment of a victim, informant or witness. Effective implementation of this legislation remains essential.

### 2. Human rights defenders

50. In his country visit report, the Special Rapporteur expressed concern over the increased targeting of human rights defenders, by both State and non-State actors. Journalists and human rights defenders often fall victim to the violence between armed groups and the Government. The State indicated during the universal periodic review in 2012 that existing legislation was in place to protect human rights defenders. It further noted that human rights defenders had direct access to the Indian Supreme Court for matters concerning human rights violations and that there were several existing measures established by the National Human Rights Commission that aimed to protect human rights defenders (see A/HRC/21/10, para. 81).

51. The Special Rapporteur welcomes the recently adopted Whistle Blowers Protection Act, 2014, as a positive measure taken by the State in the protection of human rights defenders. The Act sets up a mechanism to receive complaints of corruption or wilful misuse of power by a public servant and provides safeguard measures against the victimization of a complainant. The Act, however, does not provide any penalty for victimizing a complainant and the exposure to further harassment.

### 3. Protection of victims and witnesses

52. In his country visit report, the Special Rapporteur recommended that the State establish an effective witness and victim protection programme (see A/HRC/23/47/Add.1, para. 116). No programme has yet been created by the State.

53. The Special Rapporteur notes the recommendation by the Justice Verma Committee that the State immediately implement measures of special care to ensure the safety of female complainants and witnesses in cases of sexual assault by armed personnel. The inclusion of a chapter on the rights of victims and witnesses in the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill of 2014 is a welcome step.

54. The Special Rapporteur has been informed of instances where the Supreme Court has filed petitions, with the assistance of human rights lawyers, requesting the protection of witnesses or victims of violence. For example, the Supreme Court directed that seven women survivors of gang rape during communal violence in Uttar Pradesh in 2013 be provided with two security personnel each until the completion of the trial, or until each of the women so desires.[22] While this is a positive step, access to legal recourse may be more difficult for some individuals, especially those from poorer and marginalized sections of society. Furthermore, the Special Rapporteur has been informed that the security cover provided often falls short of constituting a comprehensive witness protection programme.

55. The Special Rapporteur has also been informed that the State has been working with the United Nations Office on Drugs and Crime, in partnership the Counter-Terrorism Committee Executive Directorate, on strengthening the protection and assistance of witnesses and victims of terrorism. The State has a central scheme for assistance to the families of the victims of terrorism.

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[22] See *Mohd Haroon* v. *Union of India* and Ors. 2014 5 SCC 252.

## VI. The role of Human Rights Commissions

56. In his country visit report, the Special Rapporteur noted the important work that had been undertaken by the National Human Rights Commission in the protection of the right to life in India. He also documented some of the impediments faced by the Commission in doing so (see A/HRC/23/47/Add.1, paras. 88–90).

57. In order to strengthen the National Human Rights Commission, the Special Rapporteur recommended that the State amend section 19 of the Protection of Human Rights Act to provide the Commission with express authorization to investigate members of the armed forces for alleged human rights violations. The Committee on the Elimination of Discrimination against Women echoed this recommendation in 2014 (see CEDAW/C/IND/CO/4-5, para. 13 (c)). No steps have been taken by the State to amend section 19.

58. The Special Rapporteur also recommended that a legal basis should be put in place to enable the extension of the period of one year under which the National Human Rights Commission can consider cases. The Special Rapporteur has been informed that no measures have been taken to extend the one-year limitation. These provisions continue to deprive victims from gaining access to the protection of the Commission.

59. In his country visit report, the Special Rapporteur recommended that the independence and the functioning of State human rights commissions be reviewed to ensure compliance with the Principles relating to the status of national institutions (Paris Principles) (see A/HRC/23/47/Add.1, para. 123). The Special Rapporteur is not aware of any such review under way in the State.

## VII. Conclusions

60. **India has taken certain positive steps to prevent the occurrence of extrajudicial killings, including through the adoption of a number of guidelines and measures by the courts and the National Human Rights Commission. Some positive legal reforms have taken place, while others are currently before parliament. Various committees and commissions have been appointed to address the occurrence of unlawful killings and violence against particular groups, which has resulted in important recommendations being made.**

61. **Cases of extrajudicial killings continue to be reported by State actors and non-State actors alike. Impunity remains a serious problem and the lack of accountability in the majority of instances of State actors is a principal concern. Legislation and policy, such as the Armed Forces (Special Powers) Act and similar, remain a real impediment to proper accountability and should be promptly repealed or amended. There is a need for fully independent bodies to be established to ensure that investigations are properly conducted and perpetrators are held to account.**

62. **Vulnerable and marginalized groups must be protected from all forms of violence, including lethal violence, and institutions tasked with monitoring, investigating and prosecuting the perpetrators of such violence must be strengthened. There is a need to put in place measures to address the barriers faced by vulnerable and marginalized groups in gaining access to justice.**

# Appendix

## Summary of follow-up to each recommendation[a]

### A. Violations of the right to life by State actors

1. **India should swiftly enact the Prevention of Torture Bill and ensure its compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

This recommendation has not been implemented.

2. **India should repeal, or at least radically amend, the Armed Forces (Special Powers) Act and the Jammu and Kashmir Armed Forces (Special Powers) Act, with the aim of ensuring that the legislation regarding the use of force by the armed forces provides for the respect of the principles of proportionality and necessity in all instances, as stipulated under international human rights law. It should also remove all legal barriers for the criminal prosecution of members of the armed forces.**

This recommendation has not been implemented.

3. **While waiting for the necessary amendment or repeal of the Armed Forces (Special Powers) Act, it should be ensured that the status of a "disturbed area" under the Act is subject to regular review – for example, every six months – and a justified decision is made on its further extension.**

This recommendation has not been implemented.

4. **Section 46 of the Criminal Procedure Code and legislation in all states regarding use of force, including the exceptional use of lethal force, by all security officers should be reviewed to ensure compliance with international human rights law principles of proportionality and necessity.**

This recommendation has not been implemented.

5. **Section 197 of the Criminal Procedure Code should be reviewed in order to remove any legal barriers for the criminal prosecution of a public servant, including the need for prior sanction from the Government before cognizance can be taken of any offence by a public servant for criminal prosecution.**

This recommendation has been partially implemented.

6. **The Indian legislation regarding the imposition of the death penalty should be reviewed to provide that the death penalty may be imposed for the most serious crimes only, namely, only for those crimes that involve intentional killing.**

This recommendation has been partially implemented.

7. **India should consider placing a moratorium on the death penalty in accordance with General Assembly resolutions, with a view to abolishing it.**

This recommendation has not been implemented.

8. **India should ensure that the registration of First Information Reports is prompt and made mandatory in all cases of unlawful killings and death threats. The**

[a] See A/HRC/23/47/Add.1, paras. 96–126.

**authorities should put in place an independent mechanism to monitor the registration of such Reports following any request to do so, and to punish law enforcement officials who refuse to register them.**

This recommendation has not been implemented.

9. **India should ensure that command and/or superior responsibility is applied for violations of the right to life by security officers.**

This recommendation has not been implemented.

## B. Violations of the right to life by non-State actors

10. **All vigilante groups and civilians recruited to perform military or law enforcement tasks, and who are not part of the regular security forces, should be dissolved and prohibited with immediate effect.**

Sufficient information has not been provided to enable assessment of progress.

11. **The protection of civilians in all instances of violence should constitute the ultimate priority. All sides involved in armed activities should immediately cease attacking civilians, including members of tribes and castes, human rights defenders and journalists. While having the duty to protect its people from the attacks perpetrated by various non-State actors, the Indian authorities should ensure its acts do not target civilians by any means, and are directed in a very precise manner at neutralizing violent non-State actors.**

Sufficient information has not been provided to enable assessment of progress.

## C. Fight against impunity

12. **India should put in place a mechanism of regular review and monitoring of the status of implementation of the directives of the Supreme Court and the National Human Rights Commission guidelines on arrest, encounter killings, and custodial violence and death.**

Sufficient information has not been provided to enable assessment of progress.

13. **The establishment and effective functioning of the independent Police Complaints Authorities should be made a priority in all states.**

Sufficient information has not been provided to enable assessment of progress.

14. **Compensation in cases of killings cannot play the role of replacement for criminal prosecutions and punishment. Alongside payment of compensation to the victims or their families, India should ensure that criminal investigations, prosecutions and trials are launched and conducted in a swift, effective and impartial manner in all cases of unlawful killings, irrespective of the status of the perpetrator.**

This recommendation has been partially implemented.

15. **Promotions and other types of awards for security officers suspected to have been involved in unlawful killings, including through encounters, should not be granted until a proper clarification of facts.**

Sufficient information has not been provided to enable assessment of progress.

16. **Autopsies should be carried out in conformity with international standards, and families of victims should have full and easy access to autopsy reports, death**

**certificates and other relevant documentation to allow them to proceed with the closure of the cases.**

Sufficient information has not been provided to enable assessment of progress.

17. **The Nanavati-Mehta Commission, and all currently functioning commissions of inquiry on various violations of the right to life, should ensure that their findings are published in a swift and transparent manner.**

This recommendation has not been implemented.

18. **India should consider launching a process of reflection upon the need to reform its judiciary with the aim of reducing the length of judicial proceedings and strengthening the independent functioning of the judiciary.**

Sufficient information has not been provided to enable assessment of progress.

19. **A credible Commission of Inquiry into extrajudicial executions in India, or at least the areas most affected by extrajudicial executions, which inspires the confidence of the people, should be appointed by the Government. The Commission should also serve a transitional justice role. It should (a) investigate allegations concerning past and recent violations of the right to life; (b) propose relevant measures to tackle them; and (c) work out a plan of action for the future to eradicate practices of extrajudicial executions. The Commission should submit recommendations on (a) legal reform; (b) the reform of State structures, including security bodies; and (c) the fight against impunity. It must complete its work within a reasonably short period. The scale of the task may require some priority areas of investigation to be determined.**

This recommendation has been partially implemented.

## D. Killings of vulnerable persons

20. **The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act should be reviewed with the aim of extending its scope to Dalit Muslims and Dalit Christians.**

This recommendation has been partially implemented.

21. **The criminal legislation should be reviewed to ensure that all gender-based killings, as well as killings of any member of a tribe or lower caste receive high sentences, possibly under the form of life imprisonment.**

This recommendation has been partially implemented.

22. **An effective witness and victim protection programme should be established.**

This recommendation has not been implemented.

23. **Information and awareness-raising campaigns should be launched to raise the level of knowledge of human rights and access to justice of the public at large, with a particular focus on vulnerable persons such as women and members of tribes and lower castes. Legal aid mechanisms for these vulnerable persons should be devised to enable them to seek protection, justice and redress in cases of violation of their rights.**

Sufficient information has not been provided to enable assessment of progress.

24. **Increased sensitization and orientation programmes in respect of all forms of killings of women should be undertaken for the police, judiciary and the public at large, especially in areas of the country which are most affected.**

Sufficient information has not been provided to enable assessment of progress.

## E. The National Human Rights Commission

25. **Section 19 of the Protection of Human Rights Act should be amended to provide the National Human Rights Commission with the express authorization to investigate members of the armed forces for alleged human rights violations.**

This recommendation has not been implemented.

26. **A legal basis should also be put in place to enable the extension of the period of one year under which the National Human Rights Commission can consider cases.**

This recommendation has not been implemented.

27. **The National Human Rights Commission should issue guidelines on the conduct of inquests and autopsies in all cases of unlawful killings.**

This recommendation has not been implemented.

28. **The independence and functioning of State human rights commissions should be reviewed to ensure compliance with the Principles relating to the status of national institutions.**

This recommendation has not been implemented.

## F. Co-operation and engagement with international organizations

29. **The practice of inviting United Nations special procedures should continue, especially in areas where international concern has been expressed, such as torture, counter-terrorism measures, enforced disappearances and minority rights. The recommendations made in 2012 by the Special Rapporteur on the situation of human rights defenders should be given serious consideration with a view to their implementation.**

This recommendation has been partially implemented.

30. **Ratification of the following treaties should take place promptly: (a) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; and (b) the International Convention for the Protection of All Persons from Enforced Disappearance.**

This recommendation has not been implemented.

31. **Ratification of the following instruments should be considered: (a) the two Optional Protocols to the International Covenant on Civil and Political Rights; (b) the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; (c) the Rome Statute of the International Criminal Court; and (d) the two Protocols additional to the Geneva Conventions.**

This recommendation has not been implemented.